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# BRITAIN'S RECORD IN HONG KONG

Robin McLaren

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Robin McLaren

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Canada-Hong Kong Resource Centre

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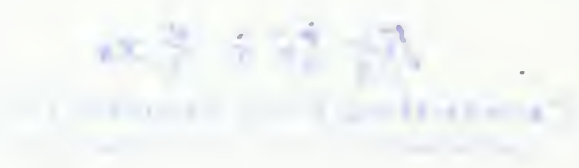
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## ABOUT THE AUTHOR

Sir Robin McLaren was British Ambassador to China from 1991 until 1994, when he retired from the Diplomatic Service. Much of his official career was spent in, or dealing with, China and Hong Kong. As Political Adviser to the Hong Kong Government (1981–85) he took part in the negotiations resulting in the Joint Declaration. He was again involved in negotiations on Hong Kong issues as British Senior Representative on the Sino-British Joint Liaison Group (1987–9). As Ambassador he took part in discussions about the new Hong Kong airport and led the British side in the talks about elections in Hong Kong which lasted for most of 1993. He also held senior positions carrying Far Eastern responsibilities at the Foreign and Commonwealth Office in London.



## PREFACE

This short paper grew out of a lecture given to the Royal Institute of International Affairs on 27 November 1996 under the title 'Britain's Record in Hong Kong: Stability, Prosperity and the Democracy Issue'. Its structure, a compromise between the chronological and the thematic, flows from a decision to concentrate on areas which have proved controversial, particularly the way in which the key negotiations with China have been handled. For that reason, and for lack of space, I have not tried to describe the remarkable growth of Hong Kong's economy over the years, though that has been the foundation for everything else.

My paper may well be thought to fall between two stools, too long for a concise summary, and not nearly long enough for a full and scholarly account of the matters with which it deals. The experts will find little, if anything, in the paper which is new. What I have tried to do is to give a reasonably coherent though far from comprehensive account of the way in which Britain has carried out its responsibilities for Hong Kong in the decades leading up to the transfer of sovereignty. In doing so I have consulted the published memoirs of leading British participants in these events, including those of Baroness Thatcher, Lord Howe of Aberavon and Sir Percy Cradock. For the earlier period I have drawn on Dr Steve Tsang's documentary history of Hong Kong, *Government and Politics* (Hong Kong University Press, 1995). I have also made use of Hong Kong government year books, which provide a rich mine of information on all matters to do with the territory. But my principal source has been my own recollections, derived from a personal involvement in Hong Kong affairs and in Britain's relations with China over the territory which lasted, on and off, for more than 35 years. The judgments, and the errors of commission and omission, are of course mine alone.

March 1997

Robin McLaren





# I INTRODUCTION

At midnight on 30 June 1997 Hong Kong will cease to be a British dependent territory. Alone among the dozens of territories where British administration has come to an end since the Second World War, it will not be given independence. Instead, under a binding treaty signed by the British and Chinese prime ministers in 1984, sovereignty will be transferred to the People's Republic of China. One of the most vibrant of modern economies, whose success has been built on the freedoms which its people enjoy under the rule of law, will be incorporated into a state still dominated by the Chinese Communist Party, whose guiding principles, the 'four cardinal points', include upholding both Marxism-Leninism-Mao Zedong thought and the people's democratic dictatorship.

These unique circumstances guarantee that the world will be watching with close attention when the Union flag is hauled down for the last time. For mainland Chinese the occasion will be one for national rejoicing. Many people in Hong Kong will celebrate with them; others will have more mixed emotions, their patriotism tempered by apprehension. For the British there will be a natural sadness at the ending, after more than 150 years, of this last great chapter in Britain's imperial history. But there will also be a sense of unease. People will ask – they do ask – whether successive British governments, Governors and parliaments have discharged their responsibilities towards the people of Hong Kong honourably and well. Have they done the right thing in the various negotiations with China? Could things have turned out differently if other policies, other courses of action had been adopted? In this paper I attempt a personal assessment.

## 2 THE HISTORICAL BACKGROUND

Today's Hong Kong came into British hands piecemeal during the course of the nineteenth century, a consequence of the unwillingness of the Qing empire to open its borders to foreign trade, and the determination and ability of the Western powers, led by Britain, to force it to do so. The territory was made over in three tranches over a period of 55 years. The first two of these tranches, Hong Kong Island in 1842, and the tip of Kowloon peninsula along with Stonecutters Island in 1861, were ceded in perpetuity following Chinese defeats in what became known as the opium wars between Britain and China. The acquisition of territory was not among the original objectives of the earliest of these wars, but by the time the British government of the day discovered what had happened it was a *fait accompli*. Britain thus somewhat casually came into possession of the best natural harbour in south China and most of the land enclosing it, an ideal base for the conduct of trade with the mainland.

The third enlargement of the colony came at the end of the century when the Qing empire was in terminal decline and the European powers, Russia and Japan were scrambling for what proved to be a final swathe of territorial concessions. Sir Claude MacDonald, the then British Minister in Beijing, was told to obtain some additional territory on the mainland, with the object of insulating Hong Kong from the increasingly unpredictable developments in China. His instructions required him to secure another cession in perpetuity. What he negotiated was a 99-year lease: MacDonald was persuaded by imperial officials that it would be awkward if Britain did not follow the precedent of recent grants of territory to Germany and France, and to Britain itself in the case of Weihaiwei in Shandong, all of which had taken the form of leases. The amount of new land involved was modest by the standards of the time but substantial in relation to the existing colony: the New Territories (as the extension became known) make up well over 90 per cent of the land area of today's Hong Kong.

This nineteenth-century background is important for an understanding of twentieth-century differences between Britain and China over Hong Kong. Few in Britain today would seek to defend the cavalier fashion in which the territory was acquired but fewer still are bothered by it: the past is a foreign country where things were done differently. Chinese feelings are stronger. For Chinese leaders in the 1990s as

much as for their Kuomintang and communist predecessors, Hong Kong's survival as a British territory has been a constant reminder of the humiliations which imperial China endured at the hands of the Western powers. As Party Secretary and President Jiang Zemin put it in a New Year broadcast for 1997: '*The return of Hong Kong to the motherland will wash away a century-old national disgrace. . .*' Viewed from that perspective, the surprising thing is not that the entire territory of Hong Kong is to be returned to China on the expiry date of the New Territories' lease, but that British administration has lasted as long as it has.

It is fascinating, if idle, to speculate on what might have happened had the New Territories been ceded in perpetuity like the rest of Hong Kong. It would have meant that Hong Kong, like Macao, would have had no particular date hanging over it, and that *might* have delayed a resolution of the issue. Whether an increasingly self-confident Chinese leadership would have been willing to enter the twenty-first century with Hong Kong and Macao still under colonial rule is another matter entirely. As it was, at the time the New Territories were leased nobody apart from one or two official lawyers seems to have regarded the lease arrangement as a potential problem: for most practical purposes 99 years is a very long time.

Hong Kong's status as a British dependency could easily have ended with the defeat of Japan in the Second World War. As the war in the Pacific progressed there was little enthusiasm in the United States for the restoration of European colonial privileges in Southeast Asia and the Far East. President Roosevelt himself would have preferred to see Hong Kong made over to Chiang Kai-Shek once the Japanese had been ousted. Naturally enough, that would also have been Chiang's preference, and he had no doubt been encouraged to believe that Hong Kong would be returned by Britain's willingness, in the Sino-British Treaty of 1943, to confirm its abandonment of the right to extraterritoriality and to maintaining concessions in China. Winston Churchill, however, had no intention of giving up Hong Kong, and luck and some neat British footwork ensured that it was British rather than Chinese (Kuomintang) forces which took the Japanese surrender in Hong Kong in 1945 and re-established the pre-war administration. But it might easily have been otherwise.



### 3 ECONOMIC GROWTH AND BRITISH ADMINISTRATION

In assessing Britain's record in Hong Kong, there is one area about which there is little controversy: the territory's material progress, the success of its economy and the wealth and well-being of its people. Here the facts speak for themselves. In 1945, when British administration was re-established after the Japanese occupation, the population had been reduced from its pre-war figure of 1.6 million to some 600,000 and the territory's economy was shattered. Less than forty years later, when the Joint Declaration was signed, Hong Kong had become one of the economic wonders of the world, a major manufacturing and trading centre whose people enjoyed a standard of living second in Asia only to Japan. Today GDP per head, at US\$23,200, is higher than that of Canada and Australia – and the UK.

It is axiomatic that Hong Kong's economic success has been built upon its geographical location and upon the hard work and entrepreneurial skills of its predominantly Chinese people. The symbiotic relationship with China, and the often tumultuous turn of events on the mainland over the past fifty years, are an important part of the story. Hundreds of thousands of people sought safety in Hong Kong in the years before and after the communist takeover in 1949. By mid-1950 the population was estimated at some 2.2 million; by 1959 it was approaching 3 million, just under half today's figure. Many of these new arrivals brought manufacturing knowledge and entrepreneurial skills with them, qualities then unappreciated in the new China: Shanghai's loss was Hong Kong's gain. Later, during the fallow years of the mainland's greatest isolation, Hong Kong was China's window on the world, the conduit through which Western goods and information reached those privileged to enjoy them. In the 1970s the territory's prosperity grew as the Cultural Revolution wound down. And in the past eighteen years Deng Xiaoping's determination to modernize China's economy, and his willingness to adopt Western methods and practices to achieve his aims, opened up extraordinary opportunities for Hong Kong businesses, and transformed Hong Kong's economy as well as that of the neighbouring parts of China. Hong Kong businesses now have some 50,000 factories in southern China, employing over five million workers, one of the reasons why during the Deng era Hong Kong rose from 23rd to 8th place in the list of the world's trading economies.

In the process Hong Kong transformed itself from a predominantly manufacturing to a service-based economy.

So good geography, good luck and the energy and sheer hard work of its people have played a major part in Hong Kong's phenomenal success. But it is right to acknowledge that there has been another ingredient: the administrative link with Britain, the link through which Hong Kong has enjoyed the benefits of sound government under the rule of law. Over the years the Hong Kong government has provided honest and efficient administration, pursuing policies inelegantly defined by a former Financial Secretary, Sir Philip Haddon-Cave, as 'positive non-interventionism' – a combination of judicious support for the economy when needed with the minimum of government interference. Businesses have been able to invest and trade, confident in the knowledge that the playing field has been kept level by a highly capable civil service and an impartial judiciary. Law and order have been maintained, firmly but fairly. A distinctive society has grown up, prosperous, well-educated and self-confident, proud of its achievements and its place in the world.

In spite of its non-interventionist approach (public spending is still only 18 per cent of GDP) the Hong Kong government has been an important provider of public housing, education, and also health and welfare services for the least well-off in the community. The government now plays a key role in all these areas, in partnership with a network of voluntary organizations and advisory bodies.

Housing has posed special and often acute problems, given the rapid rise in population in the postwar years and the severe shortage in Hong Kong of suitable building land. There was no accommodation for many of the people who flooded into the territory from China in the late 1940s and huge squatter camps grew up in which people lived in shacks constructed from whatever materials came to hand. Prompted by a disastrous fire in 1954, in which 53,000 people lost their homes, the Hong Kong government started to build basic multi-storey 'resettlement' blocks in which to rehouse people from squatter areas. Over the years this emergency relief has developed into a major public housing programme. Today 41 per cent of the population live in heavily subsidized rented accommodation and a quarter of a million people have been helped to buy their own homes. The government has constantly improved the designs of its new accommodation, and upgraded its existing stock, but there will always be more to do.

In the early 1970s the Hong Kong government began to give higher priority to education, and most primary and secondary schools are now publicly funded. Since 1971 there has been free or government-subsidized primary education for all children. By the end of the decade the school leaving age had been raised to 15. The 1980s saw a big expansion of tertiary education, especially in science and technology, and 18 per cent of all school leavers now go on to take degree courses.

Health services in Hong Kong are now among the best anywhere. Life expectancy is better than in all OECD countries except Japan, and infant mortality figures are better than in the United States, Germany or Britain. Welfare provision is no longer seen as mainly a family responsibility. In the past five years the Hong Kong government has paid particular attention to the needs of the elderly, the chronically sick and the disabled. The aim has not been to undermine the territory's competitiveness by setting up a welfare state in advance of the handover, but to ensure that the disadvantaged have a fair share of the community's increased prosperity.

Hong Kong under British administration has of course had its share of scandals and corruption cases, its crooked lawyers, its bent policemen and so on. No society is immune from failings of that kind. But in Hong Kong, as in most Western societies, such things are the exceptions that prove the rule. The will to correct them has been there, and new mechanisms have been created when necessary. To take one example, in the early 1970s evidence emerged of syndicated corruption in the public service, particularly the police. In 1974 the Independent Commission Against Corruption was established to deal with the problem. That helped to bring about a major change in public attitudes. Corruption was not eliminated and the ICAC is still needed. But organized corruption of the old kind was brought effectively to an end.

Until comparatively recently, the upper ranks of the Hong Kong civil service were dominated by expatriates. Some had served in other colonial territories; many spent their whole service in Hong Kong, to which they were fiercely loyal. Today 98 per cent of the public service, including the great majority of its most senior members, are local officers. This is partly the result of a deliberate policy of localization pursued in recent years in preparation for the transfer of sovereignty, when, in accordance with the Joint Declaration and the Basic Law, about 27 top posts will have to be occupied by Chinese nationals. But it is also the natural outcome of the recruitment of bright local graduates to the public service from at least the early 1970s onwards, and of the careful nurturing of their talents over the years. China's recognition of the value to Hong Kong of the public service which the Special Administrative Region will inherit speaks for itself.



## 4 THE CHINESE ATTITUDE

Judging from their actions as well as their words, the attitudes of China's leaders towards the continued existence of Hong Kong as a British territory have been ambivalent. On the one hand, Hong Kong is a continual reminder of the weakness of the Qing empire in the nineteenth century, and of the humiliations inflicted upon it by expansionist Western powers, Britain foremost among them. Thus the various treaties under which the territory of Hong Kong was made over to Britain are regarded as 'unequal', because imposed on China, and therefore invalid. The Chinese have never drawn any real distinction between those parts of Hong Kong which were ceded in perpetuity, and the New Territories, which were leased. In Chinese eyes they are all parts of China temporarily 'occupied' by Britain. It was in deference to this Chinese position that in the Joint Declaration, Britain undertook to 'restore' Hong Kong to the People's Republic of China, while China declared that it would 'resume the exercise of sovereignty' over Hong Kong. The phrases 'change of sovereignty' and 'transfer of sovereignty' often used (including in this paper) as shorthand do not accord with the Chinese legal view of what is to happen at midnight on 30 June 1997, though they fit in well enough with the British view.

On the other hand, China has derived enormous advantage from the fact that Hong Kong has been under British administration. During the years of the Western embargo on the export of strategic goods to China imposed after the outbreak of the Korean war, the territory became a conduit through which, despite the best efforts of the British and Hong Kong governments, certain much-needed supplies reached the mainland. Hong Kong has consistently been the source of at least a third of China's foreign exchange. And once China had adopted the policies of reform and opening in the late 1970s its old entrepôt functions revived, and it became, as noted above, an engine of growth for the economy of south China and beyond. It has provided some 60 per cent of direct investment in China since 1979, much the greater part of it by Hong Kong entrepreneurs, who have also contributed enormously in terms of expertise and Western management skills.

These somewhat contradictory considerations combined to make China's attitude to the recovery of Hong Kong over the years somewhat similar to St Augustine's attitude to chastity. Certainly, Hong Kong could not have survived as a



British territory for nearly fifty years after the communist victory on the mainland unless a succession of China's leaders had been persuaded that it was in the national interest. Yet it was always clear that at some point China would want to see Hong Kong return to the embrace of the motherland. The only question was when, and until the early 1980s China preferred to leave the timing vague.

An early statement of the Chinese position came in an editorial in the official newspaper, the *People's Daily*, on 8 March 1963:

with regard to the outstanding issues which are a legacy of the past we have always held that when conditions are ripe [such questions] should be settled peacefully through negotiations . . . Pending a settlement the status quo should be maintained. Within this category are the questions of Hong Kong, Kowloon and Macao.

The most formal expression of this position came in 1972, shortly after the Beijing government took over the Chinese seat at the United Nations from the Chinese Nationalists. In a letter explaining why it was inappropriate, in Beijing's view, for the United Nations Special Committee on Decolonization to keep Hong Kong on its agenda, the Chinese representative wrote:

The questions of Hong Kong and Macao belong to the category of questions resulting from the series of unequal treaties which the imperialists imposed on China. Hong Kong and Macao are part of Chinese territory occupied by the British and Portuguese authorities. The settlement of the questions of Hong Kong and Macao is entirely within China's sovereign right. ... The Chinese government has consistently held that they should be settled in an appropriate way when conditions are ripe.

In essence the Chinese were saying that the British had no right to be in any part of Hong Kong; they were there on sufferance, and only for so long as it suited China. It would be for China, and China alone, to decide when the 'occupation' should be brought to an end. When the time came there would be negotiations, but these would not be about *whether* the territory should be returned to the embrace of the motherland, only about *when* and *how* this should be accomplished.

It was this clear but hardly encouraging position which formed the backdrop to British administration of Hong Kong from the end of the Second World War until the signature of the Joint Declaration. It has had a number of practical consequences. For example, the Chinese regard all ethnic Chinese living in Hong Kong as Chinese nationals unless they are born overseas. They do not accept the British legal position that people of Chinese origin born or naturalized in Hong Kong are British nationals. They have not objected when such people use British passports to travel overseas but only in exceptional circumstances have they permitted Hong Kong Chinese

to use their British passports in China. Special permits have been issued by the Chinese authorities for this purpose.

More generally, the Chinese position has meant that the British and Hong Kong governments have had to handle the relationship with China over Hong Kong with great care, standing firm when it has been necessary to maintain the authority of the Hong Kong government but showing due regard for China's legitimate interests in the territory.

For many years, from the 1950s at least until the early 1970s, a particular bone of contention was the Chinese government's wish to appoint an official representative in Hong Kong. The matter was raised whenever there was high-level contact between the British and Chinese governments, but the British always declined politely to receive such a representative. Their concern was that an official appointed as the Chinese government's representative in the territory would become an alternative source of authority and that the Governor's position would be seriously undermined. There was nevertheless a clear need for local channels of communication between the British and Chinese authorities, and a pragmatic solution was found. The Director of the Hong Kong branch of the Xin Hua (New China) News Agency became recognized as the *de facto* Chinese representative, with an administrative structure to deal with his office's non-news agency functions. These included a foreign affairs department which, among other things, was responsible for local relations with the Hong Kong government, conducted through the Political Adviser's office. At times of tension, and especially at the height of the Cultural Revolution, these relations were difficult and sometimes hostile. But even during these times it was often possible, through local liaison, to defuse situations which might otherwise have got out of hand, or to find practical solutions to problems which might have proved intractable if they had had to be dealt with through diplomatic channels in Beijing or London.

The augmentation of Hong Kong's water supplies is an important example of the latter category. For the first 120 years of its existence as a British dependency Hong Kong was wholly dependent on rainfall for fresh water. Reservoirs were built from time to time, but rainfall in Hong Kong is unreliable, and the demands of a rapidly expanding population put the system under increasing strain. By the late 1950s water rationing, sometimes severe, was the norm in the dry winter months. In early 1960 there were informal indications that the Chinese authorities might be willing to supply water from a new reservoir under construction in Shenzhen across the border. Negotiations took place between delegations from Hong Kong and the Bao An county authorities in Guangdong province, and an agreement was concluded by the end of the year. The initial quantity of Shenzhen water was small and Hong Kong continued to invest heavily in new reservoirs. But the supply from China increased steadily over the years and by the late 1980s was meeting more than half of the territory's requirements.



In the late 1970s and early 1980s the range of cooperative activity organized locally was greatly extended. Before 1978 the only way people (as opposed to goods) could travel from Hong Kong direct to China was to take the Kowloon–Canton Railway to the border, walk over the bridge crossing the Shenzhen River, and take a Chinese train to Canton. During the course of 1978 through trains between Hong Kong and Canton, road and ferry links and direct air services were established, all but the last of them negotiated between Hong Kong and Guangdong officials. Close local contacts were also developed with the authorities of the new Shenzhen Special Economic Zone. An agreement to construct new border crossings was signed, and regular liaison links were established to increase cooperation in the fields of immigration, border control and policing.

Immigration is among the many areas where there were special sensitivities. The inflow of people from China was the foundation of Hong Kong's economic success but at the same time its greatest problem. In later years the Chinese authorities clearly understood the Hong Kong government's concern that uncontrolled flows of people across the border could swamp the territory and destroy its prosperity. Troops and police were deployed on both sides of the border to stop unauthorized crossings, and in normal times these measures kept 'illegal' immigration down to manageable proportions. But there were periods – 1962 and 1979 were particularly difficult years – when Chinese vigilance was relaxed and the patrols on the Hong Kong side were overwhelmed. It was the 1979 influx which led to the abandonment in the following year of what had been known informally as the 'reached base' or 'touched base' policy, under which those illegal immigrants who succeeded in penetrating the border defences and reached the urban areas of Hong Kong were allowed to stay. Thereafter all those who had entered Hong Kong illegally from China were returned, wherever they had been detained in the territory. There were a few unpublicized exceptions, people who persuaded the Hong Kong authorities that they would be subjected to unduly harsh penalties if they were sent back. But the vast majority of such people were returned to China as soon as possible after they had been detained. The Hong Kong government never referred to them, as the foreign press often did loosely, as 'refugees': they were 'illegal immigrants'.

All this, apart from the handling of exceptional cases, required close cooperation with China, as did the arrangements for 'legal' immigration to Hong Kong from China. Here both sides recognized that there were good reasons (mainly reunification of divided families) to allow a modest number of permanent arrivals. The Chinese position of principle was that the matter was entirely for China, but in practice it was ready to agree on sensible arrangements under which there was a daily average (for many years 75) of authorized immigrants, organized by the Chinese authorities on a quota basis, whereby Guangdong had 50 per cent and so on.

It was the existence of these pragmatic arrangements for immigration from China, refined over many years, which enabled the question to be dealt with in the Joint Declaration in succinct fashion:

Entry into the Hong Kong Special Administrative Region of persons from other parts of China shall continue to be regulated in accordance with the present practice.

To the extent that they concentrated on finding practical solutions to practical problems, relations between the Hong Kong government and the local Chinese authorities became increasingly good in the 1970s and early 1980s. But there was always another side to the coin. While the Chinese were ready to cooperate with the 'British Hong Kong authorities' where it was to their advantage to do so, they continued to see Hong Kong as an ideological battleground, with the British as one of the principal objects of attack. The official Chinese presence, concentrated in the Xin Hua News Agency, in various trading organizations, and (from the early 1980s) in a visa-issuing offshoot of the Chinese Foreign Ministry in Beijing, was backed by a covert Communist Party organization. Most of the functions of this party apparatus were of a 'united front' character, designed to win over the hearts and minds of the Hong Kong people, to promote a 'patriotic' spirit (i.e. support for the mainland generally and for the views of the Chinese party and government), and to combat the efforts of undercover Taiwan officials engaged in similar tasks. The existence of separate pro-communist trades unions and schools, and of Beijing-controlled newspapers and magazines, was one of the more prominent manifestations of this activity. But it has to be said that except at times of tension in the Sino-British relationship, when they were sometimes let off the leash, the communist cadres responsible for Hong Kong were operating under restraint. The general instruction was not to rock the boat: the Chinese had no wish to do anything which might upset the prosperity of the territory.

## 5 PRELUDE TO NEGOTIATIONS

By the late 1970s a number of considerations combined to cause the Governor (Sir Murray MacLehose<sup>1</sup>) and the British government to start thinking actively about the future of the territory, and when and how to raise it with China. In the first place, the termination date on the New Territories lease was beginning to make itself felt in a way which, it was judged, could begin to affect confidence before very long. The issue was a legal one, though with evident political implications. All land in Hong Kong was – and will be until 30 June 1997 – owned by the Crown and leased to those who used it. In the ceded territories (i.e. Hong Kong Island and the southern part of Kowloon) land leases were customarily for 99 years, though some early ones had been granted for much longer periods. In the New Territories, by contrast, all leases had been written to expire a few days before 30 June 1997, in accordance with the 1898 Order-in-Council, under which British administration in the New Territories would come to an end on that date.

The trouble was that most of the development in Hong Kong – urban, industrial, commercial and so on – was taking place in the New Territories. It was there that the bulk of the new land was being created by reclamation or the flattening of mountains, and there, in consequence, that most of the new leases were being issued. But these leases could not be granted for periods beyond 30 June 1997, and lawyers and accountants for companies interested in investing in the New Territories were beginning to ask awkward questions about what would happen afterwards, questions to which there was no convincing answer. 1982 was seen as a potentially crucial year, because there would then be a maximum period of 15 years for new leases, 15 years being at that time the standard period for mortgages on property in Hong Kong.

So there was a legal problem which was posing itself with some urgency in the late 1970s, and that problem was clearly related to the future of Hong Kong as a whole. A second consideration was the way in which the relationship with China over Hong Kong had developed in the 1970s, and particularly since the downfall of the Gang of Four. The wholesale repudiation of the Cultural Revolution, and the declared

<sup>1</sup> Governor from 1971 to 1982. Later Lord MacLehose of Beoch.



determination of Deng Xiaoping and the new leadership to concentrate on the modernization of China had helped to produce a widespread belief that Beijing would not want to kill the Hong Kong goose and would be ready, when the time came, to discuss the future in a sensible, pragmatic way. Whether that time would be soon was much less clear: there was also a general perception, reinforced by such indications of Chinese intentions as were available, that Taiwan was the first priority and that China would want to delay action over Hong Kong and Macao until reunification with Taiwan had been achieved, or at any rate agreed. Against that, there was a feeling that the window of opportunity would not necessarily remain open for very long. China had been rocked by so many convulsions since the foundation of the People's Republic that no one could be confident that the comparative calm of the late 1970s would not be succeeded by another period of seismic political activity.

The arguments seemed, on balance, to favour an attempt to secure China's help in finding a solution to the specific problem of land leases in the New Territories, and sooner rather than later. There was much confidential correspondence between officials in London and the Governor about what proposal to make and how to put it to the Chinese. What eventually emerged was a plan for British legislation in the form of an Order-in-Council which would permit leases to be issued valid for as long as the Crown administered the territory. More ambitiously, the same order would remove the terminal date from the 1898 Order-in-Council. The Order-in-Council would thus deal with two separate but related legal problems: the technical land leases one, and the more general difficulty that in British domestic law (the 1898 Order-in-Council), British administration in the New Territories was due to cease on 30 June 1997. Such an Order-in-Council could not, of course, be issued without the concurrence of the Chinese, but if they agreed, the fixed New Territories lease would effectively be transformed into an indefinite one. China would not be committed to permitting the continuation of British administration beyond 30 June 1997, but there would be no British legal barrier to its happening if the Chinese, nearer the time, proved willing. In the meantime, the implicit admission by China that it *might* happen would, it was thought, give a substantial boost to confidence.

The initial plan was for this proposal to be put to the Chinese leadership by the then Foreign Secretary, Dr David Owen, during a visit to China which he was planning to make in the spring of 1979, and for the way to be prepared by Sir Murray MacLehose, who had coincidentally been invited to pay the first official visit to Beijing by any Governor of Hong Kong. The 1979 general election in Britain put paid to Dr Owen's visit but Sir Murray MacLehose was authorized to go ahead with his and it took place at the end of March 1979.

Sir Murray's visit naturally aroused great interest in Hong Kong. It was taken as confirmation of China's general benevolence towards the territory and as an indication of the Chinese leadership's willingness to engage in a less arm's length rela-

tionship with its British administration. The visit also raised expectations that the future would be discussed and that some confidence-boosting statement would emerge. Sir Murray was indeed able to tell journalists that at his meeting with Deng Xiaoping (itself a signal mark of approval) Deng had emphasized the importance of Hong Kong to China's modernization plans and had said formally that investors should set their hearts at ease. It was this general message of reassurance that Deng evidently wanted the Governor to convey to international investors. But Deng also took the opportunity to outline the main elements of Chinese thinking about the future. There were still eighteen years to go before 1997 and discussions might be held before then. Any solution would have as its prerequisite that Hong Kong was part of China. By 1997 China might take over Hong Kong, but the special status of the territory would be respected. Even when there was a political solution it would not affect investment. Hong Kong would be accorded the same autonomy which would be given to Taiwan because China needed Hong Kong.

For his part, Sir Murray MacLehose explained the leases problem and the proposed solution. Deng repeated that investors should set their hearts at ease but gave no further reaction. When pressed, he said that any wording in leases should avoid reference to 'British administration'. He could not confirm that the political situation would remain unchanged, but in this century and even at the beginning of the next, Hong Kong would continue with its capitalist system while China went ahead with its socialist system. In 1997 there would be two possibilities, either to take over Hong Kong or to 'recognize present realities'. Neither solution would affect investment.

The absence of a clear response to the land leases proposal was attributed at the time at least in part to the fact that Sir Murray had had no opportunity to go over the ground with Chinese officials at a lower level before meeting Deng. The call on Deng had been arranged as the first item in Sir Murray's programme, rather than as its culmination as was the normal Chinese practice; and the land leases point was, to put it mildly, somewhat elusive for those not versed in the finer points of British law. But once Deng had spoken, it was hardly surprising that no further reaction on leases was forthcoming during the remainder of the Governor's visit, and it was not until six months later, after some prodding through diplomatic channels, that the definitive Chinese response was given. The Ambassador in Beijing, Sir Percy Cradock, was then told that the proposed action was 'unnecessary and inappropriate'. The Chinese government hoped that the British side would not proceed with it; if they did, the repercussions would adversely affect the interests of both sides.

Whatever the merits of putting forward the leases proposal, Sir Murray MacLehose's visit had provided the British government with an insight into the state of Chinese thinking about Hong Kong at the highest level. While it was evident that no final decisions had been taken, and there was certainly no detectable sense of



urgency, it seemed that China was already thinking in terms of what later became known as a 'one country, two systems' solution for Hong Kong, as well as for Taiwan. But the detail was fuzzy.

There were various high-level visits between Britain and China over the next eighteen months. Hua Guofeng, then Party Chairman, visited Britain in the autumn of 1979, Foreign Minister Huang Hua was in London in October 1980, and Lord Carrington visited China as Foreign Secretary in the spring of 1981. There was some discussion of Hong Kong on all of these occasions, but no real dialogue developed, largely, one suspects, because neither side was ready. Yet on the British side there was increasing concern that confidence could soon begin to decline if Deng's soothing message to investors remained the only reassurance. As they studied the question, and considered possible options, the British became more and more convinced that British administration was the key to the maintenance of confidence. There was at first some optimism that the economic realities would lead the Chinese to conclude for themselves that some way would have to be found to allow the status quo to continue beyond 1997, or at least that Chinese businessmen in Hong Kong would tell them that that was what was required. There was no evidence that this educational process was bearing fruit, or even taking place, but there was a reluctance on the British side to make the point about British administration directly, or to press the Chinese to expand on what Deng had said to Sir Murray MacLehose. This was at least in part for fear that any form of pressure would be counterproductive, that the ambiguities would be removed and the 'wrong' answer set in concrete.

As for the Chinese, their responses to such British enquiries as were made suggested strongly that Deng had said all there was to be said for the time being and that they were not ready to take matters any further forward. The reason may well have been that at this stage Chinese leaders had their sights set on the bigger prize of Taiwan, and that they intended to leave the easier (from the Chinese point of view) problems of Hong Kong and Macao until after the fate of Taiwan had been settled. Normalization of diplomatic relations with the United States in 1979, and the ending of the defence treaty between the United States and the 'Republic of China' (Taiwan) which was part of the deal, may have led Chinese leaders to believe that the Kuomintang leadership would be more receptive to overtures from Beijing than they had been in the past. Even if the Americans did not actually encourage the Kuomintang to negotiate with China they would presumably no longer obstruct reunification. At all events, the 'one country, two systems' formula which found concrete expression in the Joint Declaration was first spelled out in the form of a nine-point plan for reunification with Taiwan, announced in September 1981. When Lord Carrington met Deng Xiaoping in the spring of that year Deng recommended that when considering Hong Kong, the British government should study China's policies towards Taiwan.

In early 1982, however, it became clear that Hong Kong had moved up in the list of China's priorities. Premier Zhao Ziyang told Mr Humphrey Atkins, Lord Carrington's deputy at the Foreign and Commonwealth Office, who visited China in January that year, that China's stand was based on two principles: China would safeguard its sovereignty, and the prosperity of Hong Kong would be maintained. Hong Kong would remain a free port and a commercial and financial centre. As to the approach to a settlement of the issue, careful studies would be made. At the appropriate time China would discuss the problem with 'the various circles in Hong Kong', and all the parties concerned, and take account of their views. Chinese policies would be very reasonable. The problem would not be left until 1997.

There were other signs that Chinese thinking was becoming firmer, and further detail was added when Deng Xiaoping saw Edward Heath, the former British prime minister, in April 1982, in the presence of the British Ambassador. Deng asked Mr Heath whether it would be possible for China and Britain to base themselves on the nine-point plan for Taiwan. Sovereignty would belong to China, but Hong Kong could remain a free port and an international financial centre. Foreign investment would not be affected, and Hong Kong would be managed by its inhabitants, including foreigners resident there. The 'various systems' of Hong Kong would remain unchanged and, using the name of 'Hong Kong – China', the territory would manage its own non-governmental trade and commercial relations with other countries.

Deng's remarks to Mr Heath were clearly intended as a high-level message to the British government. They were not treated as such, partly because they had not formally been addressed in that way, but mainly because they raised difficult and important issues. In particular, it was increasingly evident that Chinese thinking about Hong Kong did not involve any role for Britain after 1997. In the view of British officials, the only way in which it might be possible to engage the Chinese in discussion about continuing British administration would be to indicate flexibility over sovereignty. But it was a bad time to ask British ministers to address such delicate issues. Both the Foreign Secretary (by then Francis Pym, Lord Carrington having resigned) and the Prime Minister were preoccupied with the Falklands crisis – also, of course, a matter of sovereignty. For some months the war in the Falklands and its aftermath effectively ruled out any British response to what Deng had said, or indeed any proper preparation, in the form of talks at official level, for the visit to China which Mrs Thatcher was due to make in the autumn of 1982.

The visit took place at the end of September, amid a frenzy of speculation in Hong Kong as to its likely results. The public outcome was confined to a brief communiqué which read, in full:

Today the leaders of both countries held far-reaching talks in a friendly atmosphere on the future of Hong Kong. Both leaders made clear their respective positions on this subject. They agreed to enter talks through diplomatic channels following the visit with the common aim of maintaining the stability and prosperity of Hong Kong.

This formula papered over a wide gap between the positions of the two sides. Mrs Thatcher argued that British administration was essential to the maintenance of confidence. In a carefully worded formula, she indicated that only if she were satisfied on administration could she even begin to consider a concession on sovereignty. Her Chinese interlocutors, first Zhao Ziyang as her counterpart and then Deng Xiaoping, took the line that China must recover sovereignty over the whole of Hong Kong in 1997. They did not accept that British administration was essential to the prosperity of Hong Kong but if they had to choose between sovereignty and prosperity, sovereignty would come first. They could wait a year or two, but they would then announce their plans for Hong Kong, unilaterally if necessary.

The seriousness of the differences between the two sides was soon brought out into the open. Even before the start of his discussions with Mrs Thatcher, Zhao Ziyang had told journalists that China would definitely recover sovereignty over Hong Kong but would adopt measures to preserve stability and prosperity. At press conferences in Hong Kong, Mrs Thatcher, responding to questions about the treaties, stated firmly that they were valid in international law, and if they were to be changed it should be by agreement. She added that if countries tried to abrogate treaties unilaterally it was a serious matter. She also stressed Britain's moral obligation to the people of Hong Kong. The Chinese responded with a strong restatement of their position on the treaties, and an assertion that only China had a right to claim responsibility for the people of Hong Kong.



## 6 THE JOINT DECLARATION NEGOTIATIONS

It had been expected on the British side, and in Hong Kong, that the Prime Minister's visit would be followed fairly swiftly by the start of formal discussions. This did not happen because of a disagreement about the basis on which the talks would take place. Deng had suggested to Mrs Thatcher that discussion should be on the precondition (or premise) that China would recover sovereignty over Hong Kong in 1997. Mrs Thatcher naturally did not accept this – to have done so would have given away Britain's best negotiating card in advance. The point was not pursued further at the time but it quickly re-emerged when Sir Percy Cradock was instructed to seek the early start of talks. The Chinese argued in effect that once their premise was agreed other questions would be easy to resolve; but without agreement on this point discussion about anything else would be pointless. The British response was that the talks must be without preconditions since there had been none in the joint announcement. Sir Percy and senior Chinese Foreign Ministry officials went over this ground many times during the 'talks about talks' which took place at infrequent intervals over the next few months.

The background in Hong Kong was one of considerable nervousness. For reasons only partly connected with the Prime Minister's visit and its aftermath, the Hong Kong economy was showing marked signs of weakness. Both the exchange value of the Hong Kong dollar and the Hang Seng index were affected. The Chinese added to the uneasiness by widespread dissemination of their position on sovereignty and their differences with Britain – a tactic which they were to employ frequently over the next two years. The British felt unable to go onto the offensive themselves, despite urgings to do so from some quarters in Hong Kong. To have engaged in a propaganda war would hardly have made the task of persuading the Chinese of the need for British administration easier, nor would it have improved business confidence. Instead, in order to promote confidence, the British sought to convey the impression that the talks agreed during Mrs Thatcher's visit were proceeding smoothly, or at least that substantial matters were being discussed. Against the background of Chinese leaks and sniping it was not a comfortable situation.

A way round the obstacle posed by the Chinese precondition was eventually found. In late March 1983, after various other courses of action had been considered and rejected, Sir Percy Cradock delivered a written message from Mrs Thatcher to Zhao Ziyang containing a slight strengthening of the hint about sovereignty which she had already given in her meeting with Deng. The new formulation said that provided certain important conditions (which were spelled out) were satisfied, the Prime Minister would be prepared to recommend to Parliament that sovereignty over the whole of Hong Kong should be transferred to China. Zhao responded some weeks later with a message which repeated familiar Chinese positions but noted what Mrs Thatcher had said about her willingness to recommend the transfer of sovereignty. He indicated a readiness on the Chinese side to move to formal talks. But the agenda for the talks raised a further obstacle. The Chinese suggested wording, used in Zhao's reply to Mrs Thatcher, which made it appear that the transfer of sovereignty was already agreed and it was only the details which needed to be discussed. That difficulty, too, was eventually overcome, in a formula which referred to the contents of both Prime Ministers' letters, and said that the subjects to be discussed would include 'arrangements for the maintenance of the stability and prosperity of Hong Kong after 1997, arrangements between now and 1997, and matters relating to transfer of sovereignty, in that order'.

The formal talks began in Beijing on 12 July 1983, though they were described in the agreed communiqué as the 'second phase' of the negotiations in deference to the British public position that talks had been taking place since the previous autumn, as indeed they had been. A total of 22 rounds of these formal talks were held between July 1983 and September 1984, all of them in Beijing. The teams were led on the Chinese side by a Vice Foreign Minister and on the British side by the Ambassador. The Ambassador, at first Sir Percy Cradock, then from January 1983 onwards Sir Richard Evans, was supported by Sir Edward Youde, who had succeeded Sir Murray MacLehose as Governor of Hong Kong in May the previous year, by his Political Adviser (a Foreign Office official on secondment to the Hong Kong government), and by members of the Embassy staff. These 'second phase' negotiations were themselves divided into two main stages. In the first, from July to October 1983, the British side argued for the continuation of British administration in return for acceptance of Chinese sovereignty. In the second, from October 1983 onwards, the British undertook to explore, on a strictly conditional basis, whether satisfactory post-1997 arrangements which would *not* involve British administration could be agreed between the two sides. From June 1984, after the sixteenth round, the formal rounds were supplemented by intense full-time negotiation in a working group, led on the British side by Dr David Wilson, then Assistant Under Secretary at the Foreign and Commonwealth Office, later Sir Edward Youde's successor as

Governor of Hong Kong. It was the working group, later divided in two as the pressures built up, that produced the texts which eventually formed the Joint Declaration.

This is not the place for a full account of the Joint Declaration negotiations, which would require far more space than is available here. A few observations may, however, be helpful to an understanding of the outcome, and of the context in which it was achieved.

The Chinese attitude has already been described. For Chinese leaders and their officials the negotiations were not about whether or when sovereignty should be transferred to China, or about the way in which Hong Kong would be run once the transfer had taken place. These were not questions for Britain. They were matters which had already been decided – by China unilaterally. The negotiations were about how the British should cooperate in the process. The Chinese recognized that British cooperation would be helpful in securing a smooth transition to Chinese rule, and were ready to make the odd gesture here and there to secure that cooperation. But only up to a point. China's strongest card, among many, was its leaders' readiness, if it came to it, to put sovereignty before prosperity. From the outset the formal talks took place under the shadow of warnings that Chinese patience was not unlimited. An arbitrary deadline of September 1984, emanating from Deng himself, was set: if no agreement had been reached by then, China would announce and impose its own solution. There was no reason to disbelieve that threat, or Deng's more ominous warning to Mrs Thatcher that if there were to be 'serious disturbances' in Hong Kong in the period before 1997 – disturbances which he suspected might be caused by the British – China would be 'compelled to reconsider the timing and manner' of the recovery of sovereignty. But it should be noted that, though it caused much resentment on the British side, particularly in Hong Kong, and complicated the negotiations at various stages, the Chinese deadline in the event operated as much in favour of the British as of the Chinese. During the final, detailed phase of the negotiations the need to finish work on time weighed heavily on the Chinese team, inhibited them from employing delaying tactics, and transformed the task of producing a comprehensive agreement into something approaching a genuine joint endeavour.

The British had few cards. They were bound by the terms of the 1898 treaty (which they regarded as valid even if China did not) to hand back the New Territories on 30 June 1997, and that meant effectively that they could not remain in Hong Kong after that date without China's agreement. It is still occasionally argued that Britain could and should have insisted on retaining the territories ceded in perpetuity (Hong Kong Island, Kowloon peninsula south of Boundary Street, and Stonecutter's Island in the harbour). Those who make this suggestion do not know Hong Kong. In the near century since the lease was granted, the New Territories have been fully integrated with the rest of Hong Kong. The power generation, the



bulk of the water supply, the container port, the airports (present and new) and most of the industry are located there. Any idea that a rump 'British' Hong Kong would have been viable on its own, with China hostile (as it would inevitably have been), is simply fanciful. So if the British sat on their hands and did nothing Hong Kong would fall into Chinese hands anyway, with only such guarantees as to its future administration as the Chinese thought fit to give. But the Chinese no doubt preferred, for Taiwan-related and wider international reasons, to have Hong Kong returned to them by agreement rather than through simple seizure. Moreover, the British had demonstrated over the years that they could run Hong Kong successfully; their cooperation, if it could be obtained without paying too high a price, would be worth having. Conversely, they could make things difficult for China in Hong Kong if they chose to be obstructive. At the very least they might make off with the family silver, leaving Hong Kong's coffers bare when the Chinese took over.

One card which it has been suggested should have been played to greater advantage was the mustering of international support for British positions in the negotiations. The fact that the Chinese bristled at any hint of such ganging up, denouncing it as 'internationalization' of a purely bilateral issue, is taken as evidence of Chinese susceptibility to such pressure. It is certainly true that the United States, Japan and other Western countries have considerable interests in Hong Kong, interests which they were and are anxious to protect. But many of them also have bilateral problems of their own with China, and these problems will have affected both what they said and the way it was received. In this as in other areas, unwelcome international pressure may have had some effect upon the attitude of the Chinese government, but one can only guess at what the effect would have been.

At the outset of the formal talks the British were well aware – they could not be unaware – of the general Chinese approach, and of the uphill battle they faced. Yet they were determined to press hard to see whether some way could be found to reconcile the Chinese to the idea of a continuing British role in the administration of Hong Kong. This was not, as the Chinese believed then and as some Chinese leaders may still believe, because of the revenues Britain derived from Hong Kong (there were none), or because the British were unreconstructed colonialists who would leave a territory only when forced out. It was because the British were at that time persuaded – more important, they believed that the majority of Hong Kong people were persuaded – that British administration was vital to the maintenance of domestic and international confidence in Hong Kong. There was certainly no reason to believe that China could be trusted to run a capitalist economy whose success had been built on the rule of law. Recent history suggested otherwise.

The British knew that they would not convince the Chinese that British administration must be retained by assertions that it was indispensable: the need for it would have to be demonstrated. But it seemed improbable that, with their back-



ground as communist revolutionaries and administrators of a socialist state, the Chinese leaders had more than a rudimentary understanding of how Hong Kong worked, or the part which the administrative link with Britain played in the legal and other systems upon which the territory's prosperity depended. The British tactic in the early rounds of the negotiations was therefore to concentrate on explaining how the various systems – legal, judicial, financial and so on – functioned in Hong Kong. They made no secret of their view that confidence would be fatally undermined without the British link, but they hoped that the facts, presented calmly and clearly, would lead the Chinese to draw their own conclusions. The Chinese showed no interest in this approach. They insisted that sovereignty and administration were inseparable, and refused to discuss anything else until this point was conceded. By the early autumn of 1983 it was clear that the talks were near to breakdown.

One reason for the stress which the British government and their negotiators laid upon British administration was the importance attached to it by the unofficial members of the Hong Kong Executive Council, the Governor's 'cabinet'. The negotiations about the future presented Britain with an acute dilemma. On the one hand, as already explained, the Chinese regarded the return of Hong Kong as a matter for the Chinese and British governments, and for them alone. In the Chinese view there was no role for the Hong Kong government, regarded as no more than the instrument of the British, still less for the people of Hong Kong, whose interests would be looked after by the Chinese side. The British naturally saw things differently. It would clearly not have been possible to negotiate in the full glare of publicity, with frequent announcements of the position reached and the arguments being put forward. A complex intergovernmental negotiation could not be conducted in that fashion. On the other hand, the object of the negotiation was not just a piece of land but the lives and livelihood of six million people. It was their future which was at stake. It followed that they should be involved in the process in some way, despite the Chinese attitude; and representations to that effect were made by UMELCO (the collective term for the unofficial members of the Executive and Legislative Councils) from the time when it became clear that the future would be discussed:

The solution which was adopted was to keep the Executive Council informed of developments on a strictly confidential basis and to consult them on all key issues which arose. The then Senior Unofficial Member of the Executive Council, Sir Y.K. Kan, had accompanied Sir Murray MacLehose to Beijing in 1979, and had been present at the meeting with Deng Xiaoping. From 1982 onwards the involvement gradually became much closer. Sir Edward Youde took a delegation of Executive Council unofficials to meet the Prime Minister in London before her visit to China, and such visits were repeated at critical points during the negotiations over the next two years. Once the formal talks had started, the Governor instituted a system of special Executive Council meetings at which members were briefed fully (they were

able, if they wished, to study full written records of what had been said in the talks), and were consulted on all important policy matters before decisions were taken by British ministers. The unofficial Executive Council members, led by Sir S.Y. Chung, were very conscious that they were the only Hong Kong people (apart from some Hong Kong government civil servants) who had full and accurate knowledge of what was going on. In that sense they were, though unelected, representatives of the people of Hong Kong and they saw it as their duty to give advice which as far as possible reflected what Hong Kong people would want. The unofficials took their responsibilities very seriously. The Executive Council discussions were often difficult and sometimes fraught, but there were no leaks.

Unlike their Executive Council colleagues, the unofficial members of the Legislative Council were not privy to what was going on in the talks. But they had an important place in Hong Kong affairs, and they too felt a burden of responsibility. They had been associated with the objective of seeking to maintain British administration and, by late 1983, were as influenced as everyone else in Hong Kong by the spate of rumours that the aim had been abandoned. They had a natural wish to be informed of the true situation and in December the Governor warned them that British arguments for a continuation of the status quo had made no impression. But it was left to Sir Geoffrey Howe, during his visit to Hong Kong as Foreign Secretary in April 1984, to tell the Legislative Council, and the Hong Kong public at large, officially that there was no hope of retaining British administration. Though the news was by then no more than confirmation of what almost everybody knew, it still came as a shock.

One consequence of the involvement of the Executive Council, and the careful account which British ministers took of their views at every stage, was that some of the most difficult passages in the negotiations were over issues to which the unofficial members – and the Hong Kong government – attached great importance at the time, but which seem less crucial with hindsight. A prime example is the protracted wrangling over the Sino-British Joint Liaison Group, the body through which the two sides have carried out consultations on the implementation of the Joint Declaration and the achievement of a smooth transition. Though it has often become bogged down in mutual recrimination, the Joint Liaison Group has got through a great deal of necessary preparatory work over the past twelve years and has become part of the scenery. Yet the proposal for a 'joint group' aroused alarm in Hong Kong when it was first put forward by the Chinese. Their initial ideas for its terms of reference, and their insistence that it should be located in the territory, were seen as particularly threatening, suggesting that the intention was set up an organization which would supervise the work of the Hong Kong government and effectively emasculate its authority and the Governor's powers. The establishment of such a body, what its functions should be, whether it should be located in Hong Kong and if so when, and



how long it should remain in existence were among the most contentious issues which Sir Geoffrey Howe had to deal with during the two crucial visits which he paid to Beijing as Foreign Secretary in the summer of 1984.

There was a wider Hong Kong dimension to the talks, a dimension which placed severe constraints on the British government's freedom of action and affected its negotiating tactics. This was the fact that Hong Kong was, in effect, a living organism whose health was dependent on the political environment. The British government were responsible for the territory and knew that if business confidence was seriously damaged the markets could spin out of control, with potentially disastrous consequences. The start of the talks coincided with a downturn in the economy and confidence was less than robust. It was rendered more fragile by the fierce media campaigns mounted by the Chinese during the months when the British side were fighting for the retention of British administration. In September 1983, when a barrage of Chinese attacks and threats made it impossible to conceal the fact that the negotiations were on the verge of breakdown, both the Hang Seng index and, more seriously, the Hong Kong dollar came under increasing pressure. The Hong Kong currency had traded at around 6.50 to the US dollar at the beginning of the year and declined to 7.50 at the beginning of August. The decline gathered momentum in September, despite heavy intervention from the Hong Kong government's exchange fund, and at one stage the Hong Kong dollar lost 18 per cent of its value in a single week. There was no support from China. On the contrary, the Chinese argued that the crisis was artificial, manufactured by the British to put pressure on China. The slide was arrested by the announcement in mid-October of new arrangements to link the Hong Kong dollar with the US dollar at a fixed rate of 7.80, a link which remains in place today. But it is doubtful whether the situation could have been held for long if the talks had foundered. It was the highly conditional British agreement to see what could be made of the Chinese plan, referred to above, which prevented that happening.

There were those at the time, and there have been others subsequently, who have maintained that the British should have continued to press the case for the retention of an administrative link with the UK even in the circumstances which have been described. The line runs that the Chinese would have backed down in the end, and even if they had not done so, the Hong Kong economy could have survived a breakdown in the talks. These arguments are not sustainable. Chinese statements and actions, at the time and subsequently, are all of a piece, indicating very clearly that they were not bluffing, and that they were indeed ready to put sovereignty before prosperity if they were forced into that position. And in the light of what happened in the autumn of 1983, it is far-fetched to suggest that the Hong Kong markets, and international confidence in the territory, could have weathered the consequences of a collapse in the talks.

Once the British had given their conditional undertaking to see whether the Chinese plan could be made to work, and had refined it further (in November 1983) by making it clear that they were not seeking to retain any 'link of authority or accountability' between Britain and Hong Kong, the atmosphere of the talks improved. But it was still an uphill struggle. Chinese plans, in so far as they were revealed, remained sketchy, adding little to what Deng had said to Mr Heath, and to public pronouncements by Chinese leaders. Hong Kong would become a Special Administrative Region under Article 31 of the Chinese constitution. The systems in such regions would be prescribed by law enacted by China's parliament, the National People's Congress. The Hong Kong Special Administrative Region would be governed by its inhabitants, its principal officials being appointed by Beijing on the basis of elections or consultations held locally. Local British and other foreign nationals could serve at various levels as 'advisers'. The social and economic systems and the way of life of Hong Kong people would be unchanged. Private property and foreign investments would be protected. Freedoms of speech, of publication, of information, of holding gatherings, of travel, to change domicile, of correspondence, and of religious belief would be protected. There would be a high degree of autonomy and legislative power. There would be independent judicial power including the power of final judgment. Laws and ordinances would be 'basically unchanged'. The Special Administrative Region would retain its status as a free port and an international financial centre. The foreign exchange, gold, securities and futures markets would continue, as would the free flow of capital. The Hong Kong dollar would continue to circulate and would remain freely convertible. There would be financial independence. The Special Administrative Region would retain and develop existing foreign relations in the economic and cultural fields and would be able to establish mutually beneficial economic relations with Britain. British economic interests in Hong Kong would be taken care of.

The problem about this outline was that it was just that. There were too many lacunae, too many areas of vagueness where what was wanted was precision. The task of the British negotiators was therefore to add flesh to the bare bones. There were many obstacles to be overcome in seeking to do this. The Chinese at first resisted British attempts to discuss any post-1997 arrangements which did not directly affect British economic interests, on the ground that these were internal Chinese matters. They also resisted 'detail', arguing that all that was needed was principles and these had already been laid down. The British approach was to bombard the Chinese with a series of 'working papers' which described at length the way in which the legal, judicial, financial and other systems worked and the features which would need to be retained and spelled out if the systems were to continue to function properly. The working papers were by no means easy to produce. They were mostly drafted in Hong Kong because that was where the expertise lay. But they had

to be approved by British ministers, and by the Executive Council, who went over them with a fine-tooth comb. The Chinese were very grudging about these papers at first, complaining about excessive detail. But they showed that they had taken what had been said on board in the comments which, from December 1983 onwards, they offered as elaborations of their ideas. Though these elaborations took the form of *ex cathedra* statements they increasingly incorporated elements from the British papers. And much of the detailed content of the eventual agreement, the Joint Declaration, was supplied by the British side during the final intensive phase of the negotiations.



## 7 THE JOINT DECLARATION

The agreement initialled by the principal negotiators in September 1984 and signed by the two prime ministers in December owes its unusual form to the fundamental differences between the Chinese and British approaches to the negotiations. For the Chinese they were about the restoration of a piece of Chinese territory to its rightful owner; the policies which China would adopt in Hong Kong thereafter were for China alone to determine. But it was precisely these Chinese policies which mattered most for the British, since it was upon their credibility that the maintenance of confidence and the acceptability of the agreement to the people of Hong Kong and to the British parliament would depend. The form of the Joint Declaration is thus a compromise. It is not in appearance an international treaty of the kind the British had in mind at the outset; nor does it follow the pattern of the 1972 Shanghai communiqué between the United States and China (essentially an agreement to disagree) as the Chinese initially wanted. The Sino-British Joint Declaration on the Question of Hong Kong (to give it its proper title) consists of a series of linked unilateral declarations: by China that it will resume the exercise of sovereignty over Hong Kong on 1 July 1997; by Britain that it will restore the whole of the territory to China from that date; by China setting out its policies for Hong Kong after 1997; and by both governments confirming that Britain will be responsible for the administration of Hong Kong up to 30 June 1997. China's policies are set out in twelve points, the last of which states that these policies and their elaboration in the first annex to the Joint Declaration will be stipulated in a Basic Law for the Special Administrative Region to be passed by China's National People's Congress, and that they will remain unchanged for fifty years. Two further annexes set out the terms of reference for the Joint Liaison Group, and lay down the arrangements for dealing with land leases, including the establishment of a joint Land Commission. Of crucial importance is a clause which has the effect of making the whole – the Joint Declaration and its annexes – an international agreement legally binding on both governments (which later registered the Joint Declaration as a treaty at the United Nations). This clause reads: *'The Government of the United Kingdom and the Government of the People's Republic of China agree to implement the preceding declarations and the Annexes to this Joint Declaration.'* Finally there is an exchange of memoranda which sets out

how the two governments intend to deal with nationality questions, an area of great sensitivity where the Chinese were willing to show understanding of British requirements but which they were not prepared to see dealt with in the main agreement. It should be noted that, the form notwithstanding, every word of the documents – the Joint Declaration, its annexes and the exchange of memoranda – was negotiated between the two sides.

The twelve-point policy statement incorporated in the Joint Declaration consists of general principles on lines which were already familiar by the time the text of the agreement was published. The real meat is in the ‘elaboration’ in Annex I. This spells out in clear terms the future governmental structures; the ways in which Hong Kong’s present systems – legal, judicial, financial, administrative and so on – and the rights and freedoms of Hong Kong people will be preserved under Chinese sovereignty; and the extent of the ‘high degree of autonomy’, except in foreign affairs and defence, which the Special Administrative Region is to enjoy. It is in the comprehensiveness of these provisions, and the precise and detailed language in which the great majority of them are couched, that the real British achievement lies.

The main reason for the lengthy gap between initialling and signature of the agreement was the British insistence that it could not be signed before it had been approved by Parliament, and that Parliament would not give its approval without knowing that what had been negotiated was acceptable to the people of Hong Kong. The need for any agreement on the future to be acceptable to the people of Hong Kong had been part of the British government’s public position from the outset, and had not been affected by Chinese displays of outrage whenever British ministers referred to it in public. The question was how Hong Kong people’s views should be ascertained. The obvious method, a referendum, was ruled out at an early stage. It was not just that the Chinese had made it clear that anything of the kind would be intolerable, and that they probably had it in their power to frustrate the holding of a referendum, or to influence its outcome to an unacceptable degree. That was certainly a factor but there were also practical difficulties, resulting from Hong Kong’s very limited – and discouraging in terms of low registration and even lower turnout – experience of voting at that stage; and it would be far from easy to frame the question to be put.

The method chosen was to encourage public discussion of the acceptability of the agreement once it had been published, and for the Hong Kong government to set up a special independent office to receive and collate opinions from all bodies and individuals who wished to offer them. To ensure that the Assessment Office produced a fair and unbiased assessment of the views put forward, two distinguished people, a retired Permanent Secretary from the UK (Sir Patrick Nairne), and a Hong Kong judge (Mr Simon Li), were appointed to oversee its work. The Assessment Office carried out its work conscientiously and thoroughly. Its report detailed views put forward in the local media, by representative bodies and other organizations and groups, and



by individuals. It also covered various opinion surveys. A wide variety of views was described, ranging from warm praise of the agreement, through qualified acceptance, to rejection of parts of the agreement and outright condemnation. But the overall conclusion was that most of the people of Hong Kong found the agreement acceptable.

This exercise has been dismissed as an elaborate sham in some quarters. The White Paper introducing the initialled Joint Declaration invited the people of Hong Kong to comment on '*the overall acceptability of the draft agreement ... against the background set out in this White Paper*'. But it was made clear that the text was a draft only in a technical sense. The White Paper emphasized that in the British government's view there was no possibility of an amended agreement:

The alternative to acceptance of the present agreement is to have no agreement. In this case the Chinese Government has made it plain that negotiations could not be reopened and that it would publish its own plan for Hong Kong ... The choice is therefore between reversion of Hong Kong to China under agreed, internationally binding arrangements or reversion to China without such arrangements.

The White Paper went on to say that the choice was not one which the British government had sought to impose upon the people of Hong Kong; it had been imposed by the facts of history.

The criticism is that the choice was effectively no choice at all, that the people of Hong Kong were not only presented with the agreement on a take it or leave it basis, but told that the consequences of leaving it would be unthinkable. The choice, and the background against which it had to be made, were certainly explained in stark, even brutal terms, but it is difficult, twelve years on, to take issue with the way in which they were presented. No one can seriously believe that if the report of the Assessment Office had been overwhelmingly negative, and the British government had sought to reopen the negotiations, the Chinese would have agreed. For them to have done so would have been to concede that the people of Hong Kong had not only a voice but a determining voice in their future, a notion which the Chinese had flatly rejected whenever it was raised and which ran counter to their whole approach to reunification. Nor is there any reason to question the judgment that if the agreement had been rejected as it stood, the Chinese would have imposed their own solution. If proof were needed of the ruthlessness of the leadership, and their readiness in a crisis to put political before economic interests, it was supplied in June 1989. A unilateral Chinese solution might, it is true, have incorporated many, even most of the specific provisions of the Joint Declaration. But there can be no certainty of that, and the imposition of a unilateral solution could well have created a real crisis of confidence in Hong Kong, a crisis which could even have led to the early intervention which Deng Xiaoping had threatened.

## 8 THE IMPLEMENTATION OF THE JOINT DECLARATION

### The Joint Liaison Group and cooperation between Britain and China

There was much to discuss between the two sides once the Joint Declaration had been signed and ratified. Though differences remained on many issues, consultation was made easier by the good personal relations established during the negotiations by the two foreign ministers, Sir Geoffrey Howe and Wu Xueqian, who kept in regular contact and met from time to time. Regular visits to Beijing by the Governor<sup>2</sup> also provided occasions for high-level discussion.

The main forum for intergovernmental negotiation on Hong Kong issues was, however, the Joint Liaison Group, the body charged with the work of implementing the provisions of the Joint Declaration. The location and functions of the Joint Liaison Group had been, it will be remembered, a particularly contentious issue during the negotiations, and were not finally agreed until Sir Geoffrey Howe's visit to Beijing in July 1984. The most bitterly contested point was the timing of the group's move into Hong Kong, with the Chinese demanding that this should take place immediately the Joint Declaration entered into force upon ratification (i.e. in mid-1985), and the British wanting it to be delayed until 1993. A compromise was eventually reached. The Joint Liaison Group would initially be peripatetic, meeting in Beijing, London and Hong Kong, at least once a year in each of the three places. From 1 July 1988 it would have Hong Kong as its 'principal base' but would continue to meet in the two capitals as well. Its life would be prolonged until 1 January 2000.

In deference to British views, the terms of reference of the Joint Liaison Group were tightly drawn and restrictive. Annex II to the Joint Declaration stated clearly that:

The Joint Liaison Group shall be an organ for liaison and not an organ of power. It shall play no part in the administration of Hong Kong or the Hong Kong Special Administrative Region. Nor shall it have any supervisory role over that administration.

<sup>2</sup> Sir Edward Youde until his death in December 1986; Sir David Wilson from April 1987 to May 1992.

A distinction was drawn between the matters it would deal with in the first and second halves of the period between its establishment and the transfer of sovereignty. In the first half it was to consider action to be taken by the two governments *'to enable the Hong Kong Special Administrative Region to maintain its economic relations as a separate customs territory'*, with particular reference to Hong Kong's membership of the GATT; and action *'to ensure the continued application of international rights and obligations affecting Hong Kong'*. During the second half of the period cooperation would be intensified, and would cover such matters as procedures to secure a smooth transition in 1997, and action to assist the Special Administrative Region *'to maintain and develop economic and cultural relations and conclude agreements on these matters with states, regions and relevant international organizations'*.

The Joint Liaison Group duly came into being in mid-1985. Much of its work has been concerned with creating the necessary framework for the high degree of autonomy promised in the Joint Declaration. The Joint Declaration had provided for a mirror image of the pre-1997 arrangement under which Hong Kong participates in relevant international organizations and conferences either in its own right or under a British umbrella. The Joint Liaison Group embarked upon a systematic examination of the various organizations and bodies to determine what arrangements would be appropriate in each case. In March 1986 agreement was reached that Hong Kong should become a separate contracting party to the GATT and should remain one after 1997.<sup>3</sup> Agreement has subsequently been reached on the principle and form of Hong Kong's future membership of a large number of international organizations, including such diverse bodies as the Customs Cooperation Council, the Asian Development Bank, the Universal Postal Union, the World Meteorological Organization, the International Maritime Organization, the International Telecommunications Union, the International Labour Organization and the United Nations Food and Agriculture Organization. The relevant subgroup has also worked through a long list of international treaties whose provisions have been applied to Hong Kong through British adherence to their terms. Other legal work has included what is known as the 'localization' of laws, discussion of new Hong Kong legislation to replace the provisions of British laws in force in Hong Kong in such fields as merchant shipping and civil aviation. All this work has been necessary to ensure the continued application to Hong Kong of necessary laws and treaties which would lapse with the transfer of sovereignty unless alternative arrangements were made.

The Joint Declaration provides for a substantial degree of autonomy for the Special Administrative Region in the field of air services. To replace earlier arrange-

<sup>3</sup> Hong Kong became the 91st contracting party to the GATT in April 1986 and is now a member of its successor organization, the World Trade Organization. Chinese membership of the WTO has not yet been agreed.



ments under which Hong Kong's air service interests were covered in bilateral agreements between the UK and foreign governments, the Hong Kong government has signed separate air service agreements with its main aviation partners. The terms of each of these have been agreed with China through the Joint Liaison Group (in some cases after long delays, due in part to the British side's refusal to make commercially sensitive information forming part of these agreements available to the Chinese – or for that matter the British – government).

Various matters relating to defence and internal security have been discussed in the Joint Liaison Group. In early meetings the two sides reached agreement on an expansion of the Hong Kong police force to enable it to assume full responsibility for maintaining public order in accordance with the Joint Declaration. They have also discussed issues to do with the handover of defence responsibilities from the British garrison to the Chinese forces which will be stationed in the territory after the handover. Perhaps the most complex, and certainly the most difficult of these issues was the future of 'defence lands', the various sites used by the British forces for barracks and other military purposes. There had for some years been a process of consolidating military functions in relatively remote areas of the New Territories; sites no longer needed had been returned to the Hong Kong government for public use or redevelopment (the large area which is now Hong Kong Park in the Central district of Hong Kong Island is a conspicuous example). But at the time the Joint Declaration was signed the military still occupied a large number of sites scattered around the territory, some of them in prime positions in the urban areas. The opening Chinese demand was that all these sites should be handed over to the Chinese military on the transfer of sovereignty. It took no less than seven years of hard negotiation before a satisfactory agreement was reached in June 1994. Under this agreement nearly 140 hectares of land formerly occupied by British forces, and worth up to 65 billion Hong Kong dollars, were released to the Hong Kong government for community use and to provide housing, offices and hotels.

Other land issues have been discussed, far less contentiously, in the Land Commission. The Land Commission's terms of reference were set out in Annex III to the Joint Declaration. The various provisions of this annex resolved the issue which had led to the original 1979 approach to the Chinese about land leases, by providing for the extension to 2047 of existing leases expiring before 30 June 1997, and for the grant of new ones for terms expiring in 2047. A limit of 50 hectares a year was set for the total amount of new land to be granted each year, but there was provision for this limit to be exceeded by agreement between the two sides and it has in fact been exceeded in most years since the Land Commission came into being in 1985. There was also an important provision that premium income (the sums obtained through land transactions) should be shared equally between the Hong Kong government and the future government of the Special Administrative Region.

The Hong Kong government's share was to be used for the financing of land development and capital works; the other half (known as the Land Fund) was to be reserved for the same purposes and in the meantime deposited in approved Hong Kong banks. The Land Fund grew rapidly and soon held very substantial sums.

This is by no means an exhaustive description of the questions discussed in the Joint Liaison Group but it should give an idea of the very wide range of issues that have had to be dealt with in order to prepare for a smooth transition, and of the technical nature and complexity of many of them. In the early years discussion was often difficult and time-consuming, sometimes because the Chinese negotiators (or their superiors in Beijing) did not find it easy to grasp points about British law and practice. But regular progress was nevertheless made. What changed the situation and greatly complicated the process of cooperation was the bloody suppression by the Chinese authorities of demonstrations in Beijing in early June 1989.

## The Basic Law

It was always clear that the detailed prescriptions for post-1997 Hong Kong set out in the Joint Declaration would need to be incorporated in Chinese domestic law. As noted above, the Joint Declaration itself specifically provides that:

The above-stated basic policies of the People's Republic of China regarding Hong Kong and the elaboration of them in Annex I to this Joint Declaration will be stipulated, in a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, by the National People's Congress of the People's Republic of China, and they will remain unchanged for 50 years.

The Chinese government made elaborate arrangements to draft the Basic Law. On 1 July 1985 a Basic Law Drafting Committee came into being. This had been established by decision of the National People's Congress with membership approved by its Standing Committee. At the outset there were 59 members, 23 of them from Hong Kong; by the end of the Committee's work, nearly five years later, the number had been reduced to 51,<sup>4</sup> with 18 from Hong Kong. In all the Drafting Committee held nine plenary sessions, supplemented by dozens of smaller group meetings to consider particular issues or areas. Though the meetings were all held in China and were not formally open to the public, the Hong Kong media followed developments closely and were able to provide generally accurate accounts of proceedings by talking to the Hong Kong members.

<sup>4</sup> There were 4 deaths, and, among the Hong Kong members, 2 resignations and 2 expulsions for conduct judged to be incompatible with membership of the Committee.

By 1988 a draft of the Basic Law had been completed and the Chinese authorities actively solicited views on it. The Chinese had already set up a Basic Law Consultative Committee of 180 Hong Kong people (chosen by Beijing) to act as a channel of communication between Hong Kong residents and the Drafting Committee, and this Consultative Committee organized meetings and discussions. Revisions were made and a more advanced draft, approved for circulation by the National People's Congress Standing Committee, was published in early 1989. The final version of the Basic Law was adopted by the National People's Congress in April 1990 and formally promulgated as a law of the People's Republic.

The British and Hong Kong governments were naturally keen to influence the drafting process and, before the Tiananmen incident, were able to do so by a number of indirect means, including through informal discussions between lawyers on specific legal points, organized outside the formal framework of Joint Liaison Group meetings. The exchanges on the Basic Law provisions regarding elections were particularly important and will be referred to later in this paper.

The Basic Law is considerably longer than the Joint Declaration and in a number of areas, for example the structure of the government and the composition of the legislature, its provisions are more detailed. But in general its content is a faithful reflection of the Joint Declaration, and many of the provisions in the two documents are either the same or almost identical.



## 9 TIANANMEN

As noted above, the Joint Declaration envisaged the division of the period between its ratification and the handover into two halves, with an intensification of cooperation in the second half. In practise the watershed proved to be June 1989. It is hard to exaggerate the impact of what happened in and around Tiananmen Square on the night of 3/4 June. In common with its European partners and other Western governments, the British government took a range of measures to reflect public and parliamentary revulsion at Chinese actions. These measures, which included the suspension of high-level visits and military exchanges and a halt to all defence sales, inevitably made the whole relationship with China far more difficult; Western repugnance was matched by Chinese resentment that Western governments should have imposed sanctions against China when China had done nothing to harm their interests. In Hong Kong the effects were equally severe. Hundreds of thousands of people took to the streets to demonstrate, in favour of the students and workers encamped in Tiananmen Square before 3 June, and against the killings afterwards. Shock was widespread: there were understandable fears that what had happened in Beijing in 1989 could be repeated in Hong Kong after 1997 if things went badly wrong. For their part the Chinese authorities began to view the territory in a new and sinister light, as a potential 'base for subversion' against the communist system on the mainland. They had not failed to observe that some of the tents and other equipment used by the students had been supplied from Hong Kong. The British were accused of having connived in, if not of having instigated, such activities. The result was to sour the atmosphere in which British and Chinese representatives discussed Hong Kong issues, to undermine much of the trust which had been painfully built up since the signature of the Joint Declaration, and to reopen and deepen mutual suspicions.

Tiananmen had some direct repercussions. Most important among Chinese actions was the toughening of the Basic Law in a number of unwelcome respects. On the British side, Tiananmen gave birth to legislation to give full British nationality to up to 50,000 Hong Kong people and their dependants (see below). In Hong Kong it hastened the enactment, in June 1991, of a Bill of Rights Ordinance to give effect in local law to the provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong.<sup>5</sup>

<sup>5</sup> The Joint Declaration provides that the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as applied to Hong Kong, will remain in force after 30 June 1997.

But most of the effects of Tiananmen on Hong Kong matters were indirect. Work in the Joint Liaison Group on many issues slowed markedly or was suspended. Cooperation became difficult in areas where it had hitherto been relatively easy, and virtually impossible in areas where it had merely been difficult. The Hong Kong government's plan to build a new airport to replace the increasingly overcrowded one at Kai Tak, which has only one runway and where further expansion is impossible, was perhaps the most notable casualty. The need for a replacement airport had been recognized in the 1970s and a good deal of planning had been done before the project was shelved in 1982 largely owing to the difficulties foreseen in financing it at that time. The proposal was revived in October 1989, by which time the requirement had become clear and demonstrable. It involved not only the construction of an airport on land to be created by flattening an island, but a whole variety of associated works, including new road and rail links to connect the site off the northwest coast of Lantau Island with the urban areas, and the construction of the world's longest combined road and rail suspension bridge. The Chinese attitude was one of intense suspicion. It did not help that the project was presented in Hong Kong as part of a package of measures to revive confidence, something which the Chinese could not accept was necessary. Chinese leaders regarded the plan as over-ambitious and expensive, if not as a British plot to enrich the British companies which, they wrongly assumed, would get the lion's share of the work, and to saddle the government of the Special Administrative Region with a huge burden of debt. The plan to raise some 40 per cent of the cost from the private sector (which would require a Chinese blessing for loan repayments after 1997) gave the Chinese a means of control over this aspect of the project. A series of attempts was made in 1990 and 1991 to resolve the problem, each at a more senior level than the last. The Chinese sought not only a guaranteed sum left in the Hong Kong government's reserves after the completion of the airport, and a tight limit on borrowing, but a generalized right to consultation on Hong Kong government decisions with post-1997 implications.

After much high-level intervention and negotiation the differences were resolved and a Memorandum of Understanding was agreed which recorded Chinese support for the new airport and willingness to take part in its construction in return for acceptable financial undertakings and very limited undertakings on consultation. An integral part of the package was the Prime Minister's agreement to visit Beijing to sign the MOU, which he did in late August 1991. But this was not the end of the story. The Chinese persisted in making difficulties over the financing of the project long after the MOU had been signed, and final agreement on outstanding issues was not reached until June 1995. Construction of the airport and the associated developments had, however, been proceeding smoothly in the meantime, with the work financed by the Hong Kong government. Completion of the project has been delayed a little by the dispute with China but the new airport should be open and operational in the middle of 1998.

The establishment of a Court of Final Appeal in Hong Kong is another issue on which Tiananmen had some indirect impact, though it is harder to pin down. Lying at the heart of the Joint Declaration are its provisions for the continuity of Hong Kong law, including the common law, and for the maintenance of the territory's judicial system, in which judges are independent and the courts are obliged to decide cases in accordance with the law. The only significant change in the judicial system was the abolition of appeals to the Privy Council and the substitution of arrangements for the final adjudication of disputes by a court of the Hong Kong Special Administrative Region. There were obvious advantages, in terms of continuity, in getting this new Court of Final Appeal established and operating in Hong Kong well in advance of the handover, and discussions began in the Joint Liaison Group in 1988. Agreement in principle was reached in September 1991, but further action was then delayed. This was in large part because of differences among the Hong Kong legal community and in the Legislative Council on the details of the outline agreement reached in the Joint Liaison Group. Some took the line that it was better to have no Court of Final Appeal before 1997 than to establish one which was less than ideal.<sup>6</sup> Others argued that the best should not be the enemy of the good, and that the early establishment of the new arrangements was a prize well worth having. At all events no significant steps had been taken by the time the dispute over electoral arrangements brought cooperation with China, in this as in other areas, to a halt. A detailed agreement with China was finally reached in June 1995 and the Court will now be established as soon as the Special Administrative Region comes into being, on 1 July 1997.

<sup>6</sup> One of the criticisms was that the 1991 agreement in the Joint Liaison Group provided for *a* (single) judge from other common law jurisdictions to be invited to sit on the Court, whereas the Joint Declaration and the Basic Law had left open the possibility that there might be more than one.



## 10 NATIONALITY AND PASSPORTS

Nationality and passport issues have always been sensitive in Hong Kong. They have been a sensitive matter in Britain's relations with China, as has been shown, because of the difference between the British and Chinese positions regarding the legal status of ethnic Chinese resident in Hong Kong. As Hong Kong is, in their eyes, Chinese territory the Chinese regard Hong Kong residents who are ethnically Chinese as Chinese nationals.<sup>7</sup> In British law, those born in Hong Kong up to 30 June 1997 or naturalized in the territory are British nationals. The sensitivity where Britain's relations with Hong Kong people are concerned lies in the fact that for the vast majority, their British nationality does not carry with it the right of abode in Britain.

This is not a new situation. The 1962 Commonwealth Immigrants Act removed the right to settle in the UK which Hong Kong people, along with British nationals from most other former British territories, had hitherto enjoyed. It caused much resentment in Hong Kong, a resentment which was revived by the reforms of British nationality law embodied in the 1981 Nationality Act. The 1981 act created three new categories of British citizenship to replace the old Citizenship of the United Kingdom and Colonies: British Citizen, British Dependent Territories Citizen (BDTC), and British Overseas Citizen. Nationality status was linked with right of abode; BDTCs were British nationals with the right of abode in a particular British dependency. The new status was seen in Hong Kong as a downgrading, and although right of abode in the UK had been lost since 1962, the timing of the legislation aroused unjustified suspicions that it was somehow connected with the approach of negotiations with China. BDTC status later came to be valued in Hong Kong (among other benefits, the British succeeded in securing wide visa-free access to foreign countries for its holders) but that is another matter.

Against this background it is not surprising that the Hong Kong Executive Council attached particular importance to the way in which nationality and right of abode issues were treated in the Joint Declaration, and that the relevant texts were among the last to be agreed. Satisfactory provisions on right of abode in the Special

<sup>7</sup> Exceptions are those born overseas and holding foreign passports who are regarded as 'overseas Chinese'.

Administrative Region were included in Annex I of the Joint Declaration. Permanent Residents (generally those with at least seven years' continuous residence in the territory) would be eligible for Special Administrative Region passports. The exchange of Memoranda recorded the understandings reached on nationality matters. Essentially the Chinese accepted that all who were BDTCs on 30 June 1997 would be able to continue to use British 'travel documents' (i.e. passports) if they so wished, and enjoy British consular protection in third countries. The deal involved a British undertaking to create a new form of nationality to replace British Dependent Territory Citizenship (a status which was, for obvious reasons, unacceptable to China and which would in any case be wrong in Hong Kong after the handover). The Chinese could not be persuaded that this new status should be transmissible to the next generation, as the Executive Council had wanted, but they were prepared to accept that children born up to midnight on 30 June could have British passports. The necessary British legislation – the Hong Kong (British Nationality) Order – was enacted in 1986. The title agreed for the new form of British nationality was 'British National (Overseas)'; new passports in this form began to be issued in mid-1987, though those who wished to do so could continue to use their BDTC passports. A diplomatic campaign was mounted by the British government to ensure that the new passports would be accepted by third countries. A key element in this was a mechanism agreed with China to make clear that holders of BN(O) passports had the right of abode in Hong Kong (and could therefore be returned there if they overstayed or otherwise misbehaved while they were overseas).

These arrangements were generally accepted in Hong Kong, though there was some concern that the new British legislation did not provide adequately for the 10,000 or so non-ethnic Chinese BDTCs, mostly of Indian or Pakistan origin, who held no other nationality and would not automatically become Chinese nationals after the handover. Latent worries on the nationality and right of abode fronts were, however, reawakened by the Tiananmen massacre, which raised in acute form the nature and extent of British responsibility for the people of Hong Kong.

In the days following Tiananmen a movement rapidly developed in Hong Kong for all BDTCs there – some 3.25 million of them – to be given full British citizenship with the right of abode in the UK. This was seen in Hong Kong partly as a form of insurance. It was argued that few Hong Kong people would actually take up the right to move to Britain if it was conferred on them. But the grant of British citizenship *would* give them the confidence to remain in Hong Kong. In the years since the signature of the Joint Declaration there had been a steady flow of Hong Kong emigrants to countries such as Canada, the United States and Australia. The existence of sizeable Hong Kong communities of long standing in these and other countries was proof that this pattern of emigration was not a new phenomenon: some Hong Kong people originally from China had always seen the territory as no more



than a staging post. But in the immediate aftermath of Tiananmen there were fears that the outflow, particularly of professional people and entrepreneurs, could become a flood if nothing was done to stem it, and that Hong Kong's continued prosperity, even viability would be put at risk. Foreign passports, or at least the right of abode in foreign countries, were seen as part of the answer, and emigration from Hong Kong did indeed increase sharply in the years after Tiananmen. Many of those who left have, however, since returned to Hong Kong, having obtained their passports, US green cards or foreign documentation conferring the right of abode.

In the UK there was much sympathy for the plight in which Hong Kong people had been placed, and a strong desire to help. But the demand for full British citizenship for the three million or so Hong Kong BDTCs was seen primarily in the immigration context. Leaving aside the Chinese attitude, which would certainly have been hostile, there was never any realistic prospect that the British parliament, or the country, would agree to the issue of 'insurance policies' on such a massive scale. The argument that rights could be granted on the basis that they would not be exercised attracted little support. So the question was what else could be done, within the limits of what the government thought possible in domestic political terms, to help restore confidence. The outcome, announced at the end of 1989, was legislation to grant British citizenship to 50,000 Hong Kong people and their dependants. A complex points system was used to select the beneficiaries, with weightings set to reflect the importance to Hong Kong of particular professions and economic sectors. Since the object was to help 'anchor' such people in Hong Kong, those chosen were not required to leave the territory to take up their new passports, and few have done so.

The British scheme was regarded by many in Hong Kong, and by some in Britain and elsewhere, as an inadequate response to a major crisis of confidence in a territory for which the UK had direct responsibility. It has also been argued that even if a much larger number of passports had been granted and the recipients had all taken up their right to come to the UK, the skills and qualities of Hong Kong people are such that Britain would have been the gainer. That may be true. But unlike the main emigration destinations for Hong Kong people, Britain has no regular immigration programme. It is a small and crowded country still coping with the consequences of the dismantling of empire in earlier decades, and such immigration as takes place is largely confined to 'family reunification' cases. Full British citizenship for 50,000 families may not have been generous but it was what the government judged was politically possible at the time.

On 4 February 1997 the Home Secretary announced in reply to a Parliamentary Question that legal provision would be made for the ethnic minorities holding only British nationality to apply for full British citizenship carrying the right of abode in the UK. This was in response to continuing expressions of concern in Parliament, and in Hong Kong, that their nationality status would be uncertain after the hand-



over. In effect the government accepted that the assurances previously given that any of these 'solely British non-ethnic Chinese BDTCs' (to use the cumbersome official terminology) who came under pressure to leave Hong Kong would be guaranteed admission to and settlement in the UK had not been enough to dispel their worries. These arrangements, too, fall into the insurance policy category, since most of the people concerned, now thought to number about 8,000, have lived in Hong Kong for generations and have no particular wish to move to Britain.

## II THE DEVELOPMENT OF REPRESENTATIVE INSTITUTIONS

Over the years, perhaps the most difficult issues which have arisen in Britain's relations with China over Hong Kong have been those connected with the development of representative government in the territory. Best remembered, because most recent, is the long and rancorous dispute about the organization of the Legislative Council elections in September 1995. This dispute dominated the first three years of Mr Patten's governorship and its effects are still felt, not least in the establishment by China in December 1996 of a 'provisional legislature' to operate in parallel with the elected Legislative Council before the handover and to replace it on 1 July. But, as will be seen, this was far from being the first time the British government had crossed swords with China over elections in Hong Kong.

A persistent criticism is that the British government were deathbed converts to the cause of democracy in Hong Kong; that, as Chinese spokesmen like to put it, there was 'no democracy to speak of' for the first 150 years of the territory's existence as a British dependency, and that it was only the imminence of its return to China which turned British minds in that direction.

It is undeniable that representative government came late to Hong Kong. The Legislative Council was still wholly appointed at the time the Joint Declaration negotiations took place, and the first, indirect elections were not held until 1985. Some background is necessary if the reasons for this are to be understood.

The British administration restored in 1945 was of the traditional colonial stamp. The main features of the constitution were set out in Letters Patent, which provided for a Governor, an Executive Council and a Legislative Council. The most important function of the Executive Council was to advise the Governor, who was required to consult it on all important matters and to report his reasons to the Secretary of State for the Colonies if he disregarded its advice. The Legislative Council was responsible for passing laws<sup>8</sup> and for approving government finance and expenditure. The membership of the two councils was laid down in Royal

<sup>8</sup> Formally speaking, laws are enacted by the Governor with the advice and consent of the Legislative Council, a technicality on which the Chinese base their claim that the Legislative Council is no more than an 'advisory' body.

Instructions to the Governor. Both councils had a mix of ex-officio and nominated members, the latter including officials appointed for the purpose and local inhabitants known as unofficials. In each case there was an official majority, so that the administration could always be certain of securing the necessary approval for its policies and proposals. The Governor presided over both bodies.

It will be apparent that none of the members of the Legislative Council was elected, though two of the unofficials were in practice appointed on the nomination of the local Justices of the Peace and the Hong Kong General Chamber of Commerce. The only elections were to the Urban Council, a body with limited statutory responsibilities, mostly in the fields of public health and recreation. A minority of Urban Councillors had been elected, under a very restricted franchise, since 1935.

By resuming the administration of Hong Kong in 1945, at a time when they could gracefully have allowed it to lapse, the British government took on a responsibility towards the population of the territory which was both inescapable and, because of the special circumstances, peculiarly difficult to discharge. Whether Churchill and his colleagues thought of it in those terms is uncertain, but even during the war years there was some recognition among colonial officials in London that a more representative system of government would be desirable once the Japanese had been defeated. In a speech marking the restoration of civil government in 1946, the first postwar Governor, Sir Mark Young, said that the British government were considering *'the means by which . . . the inhabitants of the territory can be given a fuller and more responsible share in the management of their own affairs'*. He went on to indicate that one way of achieving this would be to hand over some of the functions of internal administration to a municipal council *'constituted on a fully representative basis'*.

The idea of devolving local functions of the colonial administration to some kind of municipal body went back to the nineteenth century. It was considered on various occasions from the 1840s onwards but the difficulty of distinguishing, in a small colony, between 'local' matters and those which needed to be determined on a territory-wide basis was always found to be too great. Sir Mark Young nonetheless believed that the difficulties were outweighed by the advantages and, after taking local soundings, formally proposed the establishment of a municipal council with extensive responsibilities and partly elected membership. He also proposed changes in the membership of the Legislative Council which would in effect have given the unofficials a majority, except on questions of major importance where the Governor would have retained a casting vote.

Whatever the merits of the Young plan (as it became known), it was allowed to run into the sand. Young himself left Hong Kong in 1947; his successor, Sir Alexander Grantham, was opposed to the idea, at least in the form in which Young had cast it; and Colonial Office officials were at best lukewarm. There was, however,



some interest in reform among the Legislative Council unofficials and in 1949 Grantham put forward an alternative proposal involving a reorganization of the Legislative Council to give it a large unofficial majority, and the election of more than half the unofficials. After much internal deliberation in Whitehall and more than one false start a version of this scheme received Cabinet approval in 1952 but was shelved shortly afterwards. By that time Korean War restrictions had brought about the first postwar recession in Hong Kong and the time was judged to be inopportune. It was to be another thirty years before the reform of the Legislative Council was again tackled seriously.

There were a number of reasons for this. First, the administration had other and more urgent preoccupations in the early postwar decades. They had to rebuild the territory's shattered economy and restore its infrastructure; they had to cope with successive waves of immigration from the mainland; and in 1967, at the height of the most extreme phase of China's 'Great Proletarian Cultural Revolution' they had to fight off a determined and eventually violent attempt by local leftists to bring the colonial administration to its knees, if not to overthrow it. In short, the Hong Kong government were fully occupied in keeping their heads above water. If there was neither the inclination nor the administrative capacity to start democratic institution-building it is surely understandable.

Second, the local population, the majority of whom were recent arrivals from the mainland, had little interest running their own affairs. They had few expectations from government. What they looked for, and got, was fair if (in the early postwar years) minimal administration, and a secure environment in which they could get on with their lives, free from oppression and arbitrary impositions.

Third, there was a real concern that the introduction of elections, particularly to the Legislative Council, would sharpen local tensions between supporters of the two sides which had fought so bitterly in China's long civil war, and perhaps provoke serious and destabilizing conflicts between them. The Chinese Communist Party and Chiang Kai-Shek's Kuomintang were the only political parties in Hong Kong, their activities partly open and partly clandestine. They conducted running 'hearts and minds' campaigns for the loyalty of the Hong Kong people and had extended their competition into areas such as education and the trades unions. The Hong Kong government's policy, carried out over the years with considerable skill, was to restrict the influence of both these parties, to keep them apart, and to frustrate the not infrequent attempts by the Kuomintang to use Hong Kong as a base for subversive activities against the mainland. Put bluntly, the fear was that if the Hong Kong government was unable to keep its own house in order, or it looked that way from Beijing, the Chinese authorities might intervene to do it for them.

Finally, and perhaps most important, the Chinese government were opposed to the idea of elections in Hong Kong. They were well aware that in other British

dependencies elections were followed by internal self-government and that this in turn led to independence. In other words, encouraging people to take more responsibility for their own affairs was seen as part of the normal British decolonization process and therefore, in Chinese eyes, entirely inappropriate for Hong Kong. They made their views known whenever they felt a reminder was needed. For example, in conversation with a British visitor to Beijing in 1958 Zhou Enlai claimed that a plot was being hatched to turn Hong Kong into a self-governing territory like Singapore. He wanted the British government to know that China would regard any such development as a very unfriendly act; China wished the present colonial status of Hong Kong to continue with no change whatsoever.

By the mid-1970s the first of these arguments no longer applied, at least not to the same extent. The Hong Kong government had weathered the storms of the 1950s and 1960s and had found calmer waters. The late 1960s and early 1970s were boom years in Hong Kong. The 1967 disturbances had hit confidence hard, but with no major new crises and export conditions favourable, the economy grew rapidly and there was increasing prosperity. The second reason – apathy among the population about their own governance – also began to seem less cogent. The housing and educational reforms of the 1970s contributed to the emergence of an increasingly self-confident and articulate middle class. If there was at first little sign of interest in the idea of elections among the population at large, and virtually none among the community leaders appointed to the Executive and Legislative Councils, at least the ground seemed more fertile than it had done in the past.

Yet the other obstacles seemed as formidable as ever. No one was in any doubt about Chinese opposition to any suggestion of democratic reform, and the fear remained that, even if Chinese objections could be overcome, elections would bring into the open the latent split between local communist and Kuomintang supporters, with possibly explosive effects. The defeat of the leftists in 1967 had been a close-run thing and no one wanted to provoke a renewed challenge. It should be noted that the Labour governments of 1974–9, out of sympathy as they were with the laissez-faire attitudes of the Hong Kong government and its emphasis on low taxes and balanced or surplus budgets, and interested in securing social reforms, accepted that an elected legislature was not feasible. It is true that the political parties which emerged in Hong Kong to fight the 1991 elections were firmly rooted in the territory. But that does not mean that the concerns of the earlier decades were not valid at the time: by the late 1980s and early 1990s Hong Kong society had moved on, and Britain's signature on the Joint Declaration had modified Chinese attitudes to some extent.

In response to this situation, the British and Hong Kong governments looked for other means of involving the local population in the actions and decisions of government. Grass-roots participation and a sense of civic responsibility were encour-



aged by the creation in the vast public housing estates of 'Mutual Aid Committees'. In 1981 a territory-wide system of District Boards was established, bodies with advisory functions and membership drawn partly from the relevant government departments and partly from the local population (whose representatives were elected from 1982). At the same time the franchise for elections to the Urban Council was widened, and a link established between District Board and Urban Council membership.

More generally, the Hong Kong government were very conscious of the need to carry the population with them in their administration of the territory and took elaborate steps to ensure that the relevant bodies had been consulted or the views of the population at large ascertained before decisions were taken or new policies were introduced. By 1984 there were no fewer than 368 government boards and committees covering virtually the whole of Hong Kong's public life and administration.<sup>9</sup> Some were statutory, others not; in almost all cases their job was to advise the government on policy matters in their areas of competence or expertise. In addition, the government kept its ear to the ground through reports from District Officers and other officials, and, where major changes were contemplated, Green Papers or other consultative documents were issued to stimulate public debate.

At the time the Joint Declaration negotiations began, Hong Kong therefore had well-developed arrangements for public consultation, but only the rudiments of an electoral system and then only (apart from the Urban Council, which had strictly limited functions) for local-level advisory bodies. But the link with Britain ensured that people living in Hong Kong enjoyed all the rights and freedoms, other than the right to vote, which are normal in a democratic society. There was freedom of expression, a free press, independent schools and churches – the whole spectrum. Those rights and freedoms were subsequently enshrined in the Joint Declaration and later set out more systematically in the Bill of Rights, but they were already there in Hong Kong law, and there was of course an elected democratic backstop in Westminster. Even without democratic institutions of its own, Hong Kong society was at least as free as any other in Asia.

Once the objective of retaining British administration had been conditionally abandoned, it was recognized on the British side that the governmental structures then in place would not be adequate for post-1997 Hong Kong. The Chinese slogan of 'Hong Kong people ruling Hong Kong' would have to be given effect in clear and credible terms, and the new arrangements would need to be of a kind which would maximize the promised autonomy. The initial proposals by the British, in their working paper on constitutional arrangements, provided that both the Executive and the

<sup>9</sup> By early 1994 the number had increased to 563.



Legislative Councils should be 'selected by an elective process, apart from any ex-officio members'. The method of election was not specified; instead it was suggested that the composition, powers and ways of constituting the various institutions (including the Chief Executive, who it was also suggested should be elected) should depend on the evolution of government structures in the period up to 1997. No specific proposal was made in the negotiations for direct elections, partly because such a proposal would be bound to provoke a hostile Chinese reaction, but mainly because the British government accepted the unofficials' strong view that a gradual development of representative institutions would be right for Hong Kong. The outcome of the negotiations on this point was the Joint Declaration provision that the legislature of the future Special Administrative Region should be '*constituted by elections*'. That provision changed the previous calculations. There is of course a difference, as experience over the next twelve years was to demonstrate, between British and Chinese understandings of the concept of elections. But whether the phrase 'constituted by elections' is interpreted as meaning that the post-1997 legislature would be directly elected, indirectly elected or a mixture of the two, it could scarcely mean that its members would continue to be appointed.

The British concluded that it would be right to prepare the way for this wholly elected post-1997 legislature by introducing elected members to the Legislative Council gradually *before* 1997. They thought in terms of a series of steps, each preceded by public consultation. The first public consultation exercise took place in the summer of 1984, even before the conclusion of the Joint Declaration negotiations. A Green Paper was published setting out proposals for the indirect election of 12 out of a total of 48 members of the Legislative Council in 1985. Stress was laid on building on existing institutions, and on a gradual and progressive approach. Two months were allowed for discussion and comment. In the light of public reactions the Hong Kong government produced, in November 1984, a White Paper providing for a higher proportion of indirectly elected members, 24 in a Legislative Council of 56. Half of these would be – and in due course were – elected by an electoral college composed of members of the lower tiers of government in Hong Kong, the District Boards and the Urban and Regional Councils,<sup>10</sup> the other half by representatives of the economic and professional sectors of Hong Kong society grouped in what were called functional constituencies. The aim here was to continue by more democratic means the carefully balanced representation of different sectors of society which successive Governors had sought to achieve through their appointments to the Legislative Council.

<sup>10</sup> The Regional Council was established in the mid-1980s to mirror in the New Territories the functions performed by the Urban Council in the older urban areas.

What about direct elections? The White Paper concluded that there was little public support for their introduction in 1985 but held out the possibility of a 'very small number' of directly elected members at the next elections in 1988. A review was promised for 1987. It is perhaps worth noting that UMELCO supported the White Paper approach but warned against '*any rapid or radical changes which may put at risk Hong Kong's ... stability and prosperity*'. That caution was characteristic of the attitudes of leading members of the local community at the time – and at least for the remainder of the decade.

This background is essential to an understanding of the prolonged and difficult discussions about elections in Hong Kong which took place with the Chinese over the next few years. Equally important is the fact that, from mid-1985 onwards, the Chinese were engaged in the process of drafting, and consulting Hong Kong opinion about, the Basic Law.

The British and Chinese were, as so often, motivated by different and sometimes conflicting concerns. Fortified by the Joint Declaration, the British were determined to maintain their authority in Hong Kong in the run-up to 1997. To this end, they were prepared to *inform* the Chinese in advance about important developments in policy but not to give them a veto. But they also wanted to contribute to the drafting of the Basic Law.

For their part the Chinese wanted as far as possible to set in concrete the systems in place in Hong Kong at the time of the signature of the Joint Declaration. They were very sensitive about anything smacking of constitutional change, not least British plans for elections. They did not want to see anything done which might pre-empt the Basic Law in this area, and they made it amply clear that the Basic Law was a matter for China alone. They were, however, prepared to listen to British ideas, provided they were put forward informally and with due regard for Chinese sensitivities about sovereignty. In the early post-Joint Declaration years, when cooperation between the two sides was at its best, a constructive dialogue developed on the general theme of 'convergence' between British plans for developing representative government before 1997, and Chinese ideas, being developed through the Basic Law drafting process, for governmental structures after the change of sovereignty.

The Chinese showed particular nervousness about the 1987 review of representative government, both because of its timing in relation to the stage reached in drafting the Basic Law, and because of the British intention to consult public opinion about the introduction of direct elections in 1988. There was a series of high-level exchanges in late 1986 and the first half of 1987 during which British representatives resisted strong and sustained Chinese pressure to rule out direct elections in 1988. The furthest the British would go was to give an undertaking that the question whether or not to introduce direct elections in 1988 would be posed in a neutral manner in the coming review.



The review was launched by the publication of a further Green Paper in mid-1987. The Hong Kong government concluded from the public consultation process which followed that while the introduction of direct elections at some time before 1997 would be welcomed by the community, opinions were sharply divided as to whether they should be introduced in 1988. The British government endorsed a decision to increase the number of indirectly elected seats for the 1988 elections but to delay direct elections until the next Legislative Council elections in 1991.

When it was announced, this decision disappointed those who had supported direct elections in 1988. There were also accusations that the review had been no more than window-dressing and that the British and Chinese governments had agreed in advance that there would be no direct elections in 1988. Although the resentment was understandable the attacks were not justified: the review had been a genuine attempt to test public opinion, and, as indicated above, there had been no advance understanding with China. In a Legislative Council debate to take note of the Hong Kong government White Paper outlining the conclusions of the review, 37 of the 56 members voted in favour, and only eight against.

Would it have made a difference if the first direct elections had been held in 1988 rather than 1991? The advantage would have been that Hong Kong would have had earlier experience of direct elections (the starting point would probably have been ten directly elected members). Against that, their introduction at that time would certainly have led to a major row with the Chinese and disrupted the cooperation over the Basic Law which proved particularly fruitful in 1988. And there is no doubt that opinion in Hong Kong *was* divided and would have become still more sharply divided if the elections had gone ahead against the background of a Chinese propaganda blitz.

I have referred elsewhere to the profound impact of the Tiananmen massacre upon the whole process of preparing for the transfer of sovereignty. Contacts over elections, difficult enough already, were further complicated. There was a great deal at stake for both sides. The drafting of the Basic Law was in its final stages and the British wished to exercise what remaining influence they could, particularly over the Basic Law's provisions regarding post-1997 elections. The aim was to persuade the Chinese to provide for a higher proportion of directly elected seats in the first Special Administrative Region legislature than they had been ready to accept up to that point, and for rapid progress to a fully elected legislature in subsequent elections. The objective of the Chinese was in some ways the mirror image of that of the British. Their main concern was to restrict the number of directly elected seats at the next Legislative Council elections due in 1991. A lengthy negotiation, the final stages of which took the form of an exchange of diplomatic messages between the two foreign ministers ended with an understanding between them that so long as the Basic Law made provision for *at least* 20 directly elected seats in 1997, the British would limit themselves to 18 seats in 1991. And this is what happened: the Basic



Law, published in its final form in April 1990, did provide for 20 directly elected seats in 1997,<sup>11</sup> and 18 out of 60 members of the 1991 Legislative Council were directly elected.

The announcement that there would be 18 directly elected seats in 1991 received a mixed reaction in Hong Kong. Among many other things, Tiananmen had affected Hong Kong people's views about elections. While many saw 18 seats as an acceptable compromise, others wanted a higher proportion of directly elected seats in 1991 or in 1997 elections, or both. There was indeed a 'consensus' (so described) among the non-official Executive and Legislative Council members<sup>12</sup> that it would be right, in the new post-Tiananmen circumstances, to elect half the 1991 Legislative Council by direct elections.

<sup>11</sup> At the time the Basic Law was finalized it was envisaged that the Legislative Council when the Special Administrative Region came into being would be the one elected under British Administration in 1995. The Basic Law provides that 24 out of 60 seats will be directly elected in 1999, and 30 in 2003. Any changes to the 2003 composition, and to procedural rules effectively restricting the influence of directly elected members, for the next elections in 2007 will require the endorsement of two-thirds of all members of the Council and the consent of the Chief Executive.

<sup>12</sup> By this time known as OMELCO rather than UMELCO.

## 12 THE DISPUTE OVER ARRANGEMENTS FOR ELECTIONS IN 1994 AND 1995

No sooner had the 1991 elections taken place than attention turned to those due to be held in 1995. These were of particular importance, not only because they were the last Legislative Council elections to be held under British administration, but because it had been made clear by China at the time the Basic Law was promulgated that provided certain conditions were met, members elected in 1995 would be able to carry on until the first post-1997 elections due in 1999, thus providing a valuable element of continuity. To achieve this 'through train' across the 1997 barrier, the arrangements for the 1995 elections would need to be consistent with the Basic Law. The Basic Law laid down the 'method for the formation of the Legislative Council' in 1999 and subsequent years. A 'Decision of the National People's Congress on the Method for the Formation of the First Government and the First Legislative Council of the Hong Kong Special Administrative Region' laid down the composition of the 1997 legislature, but did not specify the arrangements for its election.<sup>13</sup>

The dispute between the British and Chinese governments over how those last pre-1997 elections should be held has been exhaustively covered elsewhere. It may, however, be helpful to summarize the course of events, without going over the whole ground in detail. I should also like to offer a few comments.

As has already been noted, 18 of the 60 members of the 1991 Legislative Council were directly elected in geographical constituencies covering the whole territory. 21 were elected from functional constituencies representing various economic and social sectors. Of the remaining 21, three were ex-officio members and the others were appointed by the Governor (with the approval of the Secretary of State). The composition for 1997 laid down in the National People's Congress Decision was 20 directly elected members (an increase of two over the 1991 figure), 30 elected from functional constituencies (an increase of nine), and ten to be elected by an election committee of 800 members drawn from various sectors of Hong Kong society.

<sup>13</sup> It is, however, evident from the Basic Law and the associated Decisions that in one respect, namely the formation of the Election Committee to elect ten members, the arrangements prescribed for 1999 would *not* be the same as those in 1997, which were not specified.

In his first policy address to the Legislative Address in October 1992, Christopher Patten (who had arrived in Hong Kong to succeed Lord Wilson<sup>14</sup> as Governor in early July) put forward specific proposals for the 1995 elections. He set out detailed arrangements which were intended to result in elections that would be consistent with the Basic Law, but would also be fair, open and acceptable to the people of Hong Kong. He emphasized that his proposals *were* proposals, not decisions: he explicitly recognized that they would need to be discussed with China. The Chinese response was to denounce the proposals publicly, claiming that they did not conform with the Basic Law and violated agreements and understandings which they said had been reached on these matters in the 1990 exchange of messages between foreign ministers. They were ready to discuss electoral arrangements, but only if the Governor's proposals were first withdrawn. No progress was made during Mr Patten's first (and only) visit to Beijing as Governor later that month.

Beijing's denunciation resulted partly from the fact that Mr Patten's proposals had not been agreed with China before they were outlined in his Legislative Council address. (The Chinese had in fact been given advance notice of the proposals the Governor intended to make and had responded by asking him not to do so, warning of unwelcome consequences if he went ahead. The reasons why this warning was disregarded will be discussed later.) The Chinese also objected to the substance of the proposals, in particular those for the functional constituencies, where the Governor proposed to abolish corporate voting and to extend the franchise in the nine new functional constituencies to the entire 2.7 million work force; and for the election committee, which the Governor proposed should be drawn from elected District Board members.

The Chinese eventually agreed to discuss the electoral arrangements for 1994 and 1995. A comprehensive British account of the negotiations, and the lengthy 'talks about talks' which preceded them was published in a White Paper.<sup>15</sup> As with the Joint Declaration negotiations, the diplomatic skirmishing before the opening of the talks proper centred on Chinese attempts, in the form of repeated demands for the withdrawal of the October 1992 proposals, to prejudice their outcome. In mid-April 1993, it was announced that talks would be held on the basis of the Joint Declaration, the principle of convergence with the Basic Law and the agreements and understandings previously reached between the two sides. The British accepted this formulation because they contended that there was nothing in their proposals which conflicted with the Joint Declaration and the Basic Law, or violated previous agreements or understandings (including any contained in the 1990 exchange of messages, which was subsequently made public by both sides; the British government did not accept that there were any such agreements or understandings in respect of the 1995 elections).

<sup>14</sup> Sir David Wilson became Lord Wilson of Tillyorn on the completion of his term as Governor.

<sup>15</sup> *Representative Government in Hong Kong*, published in February 1994 (CM 2432).



The talks opened in Beijing in April with the two teams led, as in the case of the Joint Declaration negotiations, by the British Ambassador and a Chinese Vice Foreign Minister. The British objective was both to agree electoral arrangements and to establish a satisfactory basis for the through train, in the form of clear and objective criteria to be used in determining whether members elected in 1995 could serve their full four-year terms: there would have been no point in an agreement on elections unless it provided for continuity through 1997.

Seventeen rounds of talks were held between April and late November 1993. The early rounds were barren, with the Chinese insisting on prior agreement to a list of prejudicial principles before moving on to practical arrangements. In the next rounds the Chinese began to reveal their hand, but it became clear that there was a wide gap on substantive issues, including the size of the electorate in the new functional constituencies, the make-up of the Election Committee, and voting methods in geographical constituencies. Following a visit to Beijing in July by the Foreign Secretary (Douglas Hurd), the talks moved into a more active phase. The British made a number of moves towards the Chinese side, particularly by offering modifications to their proposals for the functional constituencies and the Election Committee. After some exchanges on these issues, and an initial discussion of the criteria which Legislative Council members would have to meet in order to carry on after 1997, the Chinese proposed an interim understanding on the questions which they accepted were more urgent, mainly those to do with the Municipal and Regional Council elections due to be held in 1994, though some concerned the Legislative Council elections as well.

The final rounds of the 1993 talks focused on the content of an interim understanding, but a satisfactory basis for it could not be established in the time available. At the end of November the Foreign Secretary warned his Chinese counterpart that for practical and political reasons it would be necessary to introduce legislation covering the more urgent issues in mid-December and to announce that this would be done on 2 December. The Chinese response was that this would lead to a breakdown, and the talks ended at that point: the Chinese declined to carry on. There were no further serious attempts to reach agreement. The Legislative Council in due course passed laws providing for elections on the lines set out in October 1992,<sup>16</sup> and the 1994 Municipal and Regional Council elections and the 1995 Legislative Council elections were duly held on that basis. The Chinese made clear that there would be no through train in 1997 and in December 1996 the 'Selection Committee' which had been constituted to elect the Special Administrative Region's first Chief

<sup>16</sup> The possibility of enacting electoral legislation reflecting the modifications to Mr Patten's original proposals which had been put forward in the talks by the time they broke down was seriously discussed but in the event not pursued.

Executive was used to elect a 'Provisional Legislature' which, the Chinese say, will remain in existence for no longer than a year after 1 July to allow time for fresh elections to be organized in accordance with the Basic Law.

As the 1993 talks ended in failure, with the serious consequences described above, one needs to ask what went wrong. Could a more favourable outcome have been achieved if the British side had acted differently? Mr Patten and the British government have been accused of precipitating a damaging and avoidable public dispute, first by failing to anticipate Chinese objections to the 1992 proposals, and then for ignoring clear Chinese warnings of the consequences should the Governor persist with them. It is argued that the prudent course would have been to delay any announcement of electoral arrangements for 1995 until after agreement had been reached with China. In the circumstances of 1992 that was not an attractive option. By the time Mr Patten arrived in Hong Kong in July of that year, public attitudes towards elections had undergone a sea change. The fact that members of the newly founded Democratic Party and their allies had won 16 out of the 18 directly elected seats in 1991 had much to do with it; it certainly increased interest in the arrangements for the remaining elections to be held under British administration. There were many in Hong Kong whose first priority was to secure a through train in 1997 and for that reason urged caution. Others disliked the new-style politics and politicians. But Mr Patten was under intense pressure from all sides to tell Hong Kong what he intended to do about the coming raft of elections, especially the 1995 elections for the Legislative Council. With the benefit of hindsight, it seems odd that there should have been so much excitement about these elections three full years before they were due to be held. But almost all the local advice to the new Governor was that if he was not to lose credibility he would need to announce his intentions in his first Legislative Council address.

Given this changed atmosphere, and the extent of public interest, it would have been very difficult to conduct a negotiation in secret with China about elections. It is true that the Joint Declaration was the outcome of confidential negotiations and it could not have been achieved in any other way. But even at that time the fact that Hong Kong people's future was being decided over their heads caused serious disquiet in the territory. There can be little doubt that in the post-Tiananmen 1990s, the Governor and the British government would have come under the most intense public criticism had they agreed to negotiate arrangements for the last elections to be held under British administration without any prior public announcement of what the British side would be seeking to achieve in those negotiations. And the Chinese might well have strung out the talks indefinitely, as they sought to do in 1993, leaving the British with increasingly awkward decisions about legislation as the dates for the various elections drew nearer.

The British conduct of the eventual negotiations has also been questioned, in par-



ticular the recourse to deadlines relating to the timetable for the introduction of draft electoral legislation in Hong Kong, and public statements about what would or would not be acceptable to the Legislative Council and to Hong Kong opinion more generally. These reminders of the importance of the views of Hong Kong people certainly did not make the negotiations easier. But by the time the talks took place, they were no more than facts of life in Hong Kong, and in the end it was not considerations of this kind which caused the breakdown in the negotiations, but the wide gap between the two sides on the substance of the discussions, the way in which the last elections should be organized.

It will be apparent from the summary description given above that the differences were over detailed, even technical matters. The British were not, after all, pressing for all 60 members of the 1995 Legislative Council to be directly elected (though they have been attacked in some quarters for not doing so). That would not have been consistent with the principal of gradual development of representative institutions which had been British policy from the early 1980s onwards, and which accorded with the wishes of most people in Hong Kong. It would also have put paid to any prospect of achieving a through train in 1997. What the British sought to do was to arrange the elections in a way which would be as free and fair as possible within the Basic Law constraints. But the Chinese interpreted the Basic Law provisions in a different and much more restrictive fashion. The British moved a long way towards the Chinese during the course of the negotiations but the Chinese moved hardly at all and in the end the gap was too wide to be bridged.

The final, and more general criticism is that the British duty was to negotiate long and toughly but to accept the best deal that could be obtained at the end of the day. The argument is that the British would have performed a greater service for Hong Kong people by securing a through train than they did by holding out for arrangements which may have been a considerable improvement on what the Chinese were prepared to endorse but were still far from being fully democratic. This must be a matter of judgment. However, Hong Kong people were not inhibited by the dispute with China and its aftermath from taking part in the 1994 and 1995 elections. In the September 1995 elections for the Legislative Council, 1.4 million votes were cast, 80 per cent more than in 1991. The elections were held freely and fairly and they produced, for the first time in Hong Kong's history, a wholly elected legislature. Though only a third of its members were directly elected, the others were elected by methods which were open and transparent. The price paid for these gains has been high in terms of the loss of the through train and the confusion caused by the establishment by China of a provisional legislature. Whether it will have been worth paying, only time will tell. But it is doubtful whether any British Governor or government would have been able to agree to flawed arrangements for the last elections to be held in Hong Kong under British administration.



## 13 AFTERWORD

The Hong Kong Special Administrative Region born at midnight on 30 June will be a highly privileged infant. It will benefit from many years of sound public finances, starting life with fiscal reserves of 150 billion Hong Kong dollars, forecast to rise to over 170 billion by the end of the next financial year, and almost 150 billion dollars in the Land Fund. The total reserves of some 320 billion Hong Kong dollars<sup>17</sup> are the equivalent of seven times the Hong Kong government's annual capital programme – no mean cushion. And this is all Hong Kong money to be spent in Hong Kong, not money at China's disposal for mainland purposes. The Joint Declaration and the Basic Law are quite clear about that.

The Special Administrative Region will also inherit the fruits of a very large investment in infrastructure, some 228 billion Hong Kong dollars in the past five years alone. The development programme has included new roads, new port facilities, major investment in waste disposal, new homes, and, not least, what will be the world's most modern and its second busiest airport when it comes into being.

The economy should be in rude health, though overheating in the property market has recently been causing some concern. Since the Joint Declaration was signed, Hong Kong's GDP has almost doubled in real terms, exports have increased by 330 per cent, and investment by over 120 per cent. And the performance has been equally impressive in other important fields. Education is strong, health care is good and has been steadily improving, and social stability has been maintained, despite the political buffeting to which the territory has been subjected over the past few years. Crime rates are about the same as Singapore's, and far lower than those in most other major international cities.

So there is little doubt that Hong Kong after 30 June will take its place as the wealthiest, most modern, and most international city in China. But will it be more than that? That depends on whether Hong Kong's legal, judicial and electoral systems, and the rights and freedoms of Hong Kong people, retain the particular characteristics acquired and nurtured through 150 years of the British connection –

<sup>17</sup> About £26 billion, or US\$41 billion.

in short, on whether 'one country, two systems' will be allowed to mean what it should mean. And that in turn depends on the extent to which China's leaders, and the Hong Kong people who will be responsible for the governance of the new Special Administrative Region, observe the provisions of the Joint Declaration and the Basic Law in letter and in spirit. Some of the recent omens have been worrying, among them the establishment of the provisional legislature, indications that press freedom may be curtailed and that the Bill of Rights and other legislation in the field of civil liberties will be repealed or amended. Other developments are more encouraging, notably the appointment of Tung Chee-Hwa as the first Chief Executive of the Special Administrative Region, and his decision, endorsed by China, to retain almost all the most senior members of Hong Kong's civil service in their present positions.

Could Britain have done more to ensure China's compliance with the Joint Declaration, for example by building more 'guarantees' into the agreement? It is hard to see how. The Joint Declaration is an agreement between two sovereign nations, and there is no international machinery for settling disputes about the interpretation of bilateral treaties unless both parties agree. The British government can and will monitor carefully the way in which the provisions of the Joint Declaration are observed after the transfer of sovereignty, and the international community, which has a strong interest in the continued existence of a free and flourishing Hong Kong, will be watching developments very closely. But the best guarantee is that respect for the Joint Declaration is in China's national interest, which will not change, whatever changes may take place on the mainland in the coming years. Hong Kong's prosperity and the systems and values which helped to create it are closely linked. And Beijing's chances of persuading Taiwan to agree to reunification must surely depend crucially on whether the 'one country, two systems' formula proves successful in Hong Kong, and, when the Portuguese territory follows Hong Kong in 1999, in Macao.

Hong Kong will certainly change when British administration ends. It would be foolish to pretend that the transfer of sovereignty will make no difference at all. There will certainly be changes of style and emphasis as well as of flag. Other changes will result from the territory's vitality and dynamism: Hong Kong has always been in a state of evolutionary transition, and the Hong Kong of today is in many ways a different place from what it was in 1984. Provided the changes do not undermine the systems and values which have done so much to create the territory's prosperity, we can be confident that Hong Kong will continue to flourish. Its continued success will owe much to its British inheritance.

## APPENDIX

### **Joint Declaration**

#### **of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong with Annexes**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China have reviewed with satisfaction the friendly relations existing between the two Governments and peoples in recent years and agreed that a proper negotiated settlement of the question of Hong Kong, which is left over from the past, is conducive to the maintenance of the prosperity and stability of Hong Kong and to the further strengthening and development of the relations between the two countries on a new basis. To this end, they have, after talks between the delegations of the two Governments, agreed to declare as follows:

1. The Government of the People's Republic of China declares that to recover the Hong Kong area (including Hong Kong Island, Kowloon and the New Territories, hereinafter referred to as Hong Kong) is the common aspiration of the entire Chinese people, and that it has decided to resume the exercise of sovereignty over Hong Kong with effect from 1 July 1997.
2. The Government of the United Kingdom declares that it will restore Hong Kong to the People's Republic of China with effect from 1 July 1997.
3. The Government of the People's Republic of China declares that the basic policies of the People's Republic of China regarding Hong Kong are as follows:
  - (1) Upholding national unity and territorial integrity and taking account of the history of Hong Kong and its realities, the People's Republic of China has decided to establish, in accordance with the provisions of Article 31 of the Constitution of the People's Republic of China, a Hong Kong Special Administrative Region upon resuming the exercise of sovereignty over Hong Kong.
  - (2) The Hong Kong Special Administrative Region will be directly under the authority of the Central People's Government of the People's Republic of China. The Hong Kong Special Administrative Region will enjoy a high degree of autonomy, except in foreign and defence affairs which are the responsibilities of the Central People's Government.
  - (3) The Hong Kong Special Administrative Region will be vested with executive, legislative and independent judicial power, including that of final adjudication. The laws currently in force in Hong Kong will remain basically unchanged.



- (4) The Government of the Hong Kong Special Administrative Region will be composed of local inhabitants. The chief executive will be appointed by the Central People's Government on the basis of the results of elections or consultations to be held locally. Principal officials will be nominated by the chief executive of the Hong Kong Special Administrative Region for appointment by the Central People's Government. Chinese and foreign nationals previously working in the public and police services in the government departments of Hong Kong may remain in employment. British and other foreign nationals may also be employed to serve as advisers or hold certain public posts in government departments of the Hong Kong Special Administrative Region.
- (5) The current social and economic systems in Hong Kong will remain unchanged, and so will the life-style. Rights and freedoms, including those of the person, of speech, of the press, of assembly, of association, of travel, of movement, of correspondence, of strike, of choice of occupation, of academic research and of religious belief will be ensured by law in the Hong Kong Special Administrative Region. Private property, ownership of enterprises, legitimate right of inheritance and foreign investment will be protected by law.
- (6) The Hong Kong Special Administrative Region will retain the status of a free port and a separate customs territory.
- (7) The Hong Kong Special Administrative Region will retain the status of an international financial centre, and its markets for foreign exchange, gold, securities and futures will continue. There will be free flow of capital. The Hong Kong dollar will continue to circulate and remain freely convertible.
- (8) The Hong Kong Special Administrative Region will have independent finances. The Central People's Government will not levy taxes on the Hong Kong Special Administrative Region.
- (9) The Hong Kong Special Administrative Region may establish mutually beneficial economic relations with the United Kingdom and other countries, whose economic interests in Hong Kong will be given due regard.
- (10) Using the name of "Hong Kong, China", the Hong Kong Special Administrative Region may on its own maintain and develop economic and cultural relations and conclude relevant agreements with states, regions and relevant international organisations.

The Government of the Hong Kong Special Administrative Region may on its own issue travel documents for entry into and exit from Hong Kong.

- (11) The maintenance of public order in the Hong Kong Special Administrative Region will be the responsibility of the Government of the Hong Kong Special Administrative Region.
- (12) The above-stated basic policies of the People's Republic of China regarding Hong Kong and the elaboration of them in Annex I to this Joint Declaration will

be stipulated, in a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, by the National People's Congress of the People's Republic of China, and they will remain unchanged for 50 years.

4. The Government of the United Kingdom and the Government of the People's Republic of China declare that, during the transitional period between the date of the entry into force of this Joint Declaration and 30 June 1997, the Government of the United Kingdom will be responsible for the administration of Hong Kong with the object of maintaining and preserving its economic prosperity and social stability; and that the Government of the People's Republic of China will give its co-operation in this connection.

5. The Government of the United Kingdom and the Government of the People's Republic of China declare that, in order to ensure a smooth transfer of government in 1997, and with a view to the effective implementation of this Joint Declaration, a Sino-British Joint Liaison Group will be set up when this Joint Declaration enters into force; and that it will be established and will function in accordance with the provisions of Annex II to this Joint Declaration.

6. The Government of the United Kingdom and the Government of the People's Republic of China declare that land leases in Hong Kong and other related matters will be dealt with in accordance with the provisions of Annex III to this Joint Declaration.

7. The Government of the United Kingdom and the Government of the People's Republic of China agree to implement the preceding declarations and the Annexes to this Joint Declaration.

8. This Joint Declaration is subject to ratification and shall enter into force on the date of the exchange of instruments of ratification, which shall take place in Beijing before 30 June 1985. This Joint Declaration and its Annexes shall be equally binding.

Done in duplicate at Beijing on 19 December 1984 in the English and Chinese languages, both texts being equally authentic.

For the Government of the  
United Kingdom of Great Britain and  
Northern Ireland

For the Government of the  
People's Republic of China

[Margaret Thatcher]

[Zhao Ziyang]

## ANNEX I

### ELABORATION BY THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA OF ITS BASIC POLICIES REGARDING HONG KONG

The Government of the People's Republic of China elaborates the basic policies of the People's Republic of China regarding Hong Kong as set out in paragraph 3 of the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the Question of Hong Kong as follows:

#### I

The Constitution of the People's Republic of China stipulates in Article 31 that "the state may establish special administrative regions when necessary. The systems to be instituted in special administrative regions shall be prescribed by laws enacted by the National People's Congress in the light of the specific conditions." In accordance with this Article, the People's Republic of China shall, upon the resumption of the exercise of sovereignty over Hong Kong on 1 July 1997, establish the Hong Kong Special Administrative Region of the People's Republic of China. The National People's Congress of the People's Republic of China shall enact and promulgate a Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China (hereinafter referred to as the Basic Law) in accordance with the Constitution of the People's Republic of China, stipulating that after the establishment of the Hong Kong Special Administrative Region the socialist system and socialist policies shall not be practised in the Hong Kong Special Administrative Region and that Hong Kong's previous capitalist system and life-style shall remain unchanged for 50 years.

The Hong Kong Special Administrative region shall be directly under the authority of the Central People's Government of the People's Republic of China and shall enjoy a high degree of autonomy. Except for foreign and defence affairs which are the responsibilities of the Central People's Government, the Hong Kong Special Administrative Region shall be vested with executive, legislative and independent judicial power, including that of final adjudication. The Central People's Government shall authorise the Hong Kong Special Administrative Region to conduct on its own those external affairs specified in Section XI of this Annex.

The government and legislature of the Hong Kong Special Administrative Region shall be composed of local inhabitants. The chief executive of the Hong Kong Special Administrative Region shall be selected by election or through consultations held locally and be appointed by the Central People's Government. Principal officials (equivalent to Secretaries) shall be nominated by the chief executive of the Hong Kong Special Administrative Region and appointed by the Central People's Government. The legislature of the Hong Kong Special Administrative Region shall be constituted by elections. The executive authorities shall abide by the law and shall be accountable to the legislature.

In addition to Chinese, English may also be used in organs of government and in the courts in the Hong Kong Special Administrative Region.

Apart from displaying the national flag and national emblem of the People's Republic of China, the Hong Kong Special Administrative Region may use a regional flag and emblem of its own.

#### II

After the establishment of the Hong Kong Special Administrative Region, the laws previously in force in Hong Kong (i.e. the common law, rules of equity, ordinances, subordinate legislation and customary law) shall be maintained, save for any that contravene the Basic Law and subject to any amendment by the Hong Kong Special Administrative Region legislature.

The legislative power of the Hong Kong Special Administrative Region shall be vested in the legislature of the Hong Kong Special Administrative Region. The legislature may on its own authority enact laws in accordance with the provisions of the Basic Law and legal procedures, and report them to the Standing Committee of the National People's Congress for the record. Laws enacted by the legislature which are in accordance with the Basic Law and legal procedures shall be regarded as valid.

The laws of the Hong Kong Special Administrative Region shall be the Basic Law, and the laws previously in force in Hong Kong and laws enacted by the Hong Kong Special Administrative Region legislature as above.



### III

After the establishment of the Hong Kong Special Administrative Region, the judicial system previously practised in Hong Kong shall be maintained except for those changes consequent upon the vesting in the courts of the Hong Kong Special Administrative Region of the power of final adjudication.

Judicial power in the Hong Kong Special Administrative Region shall be vested in the courts of the Hong Kong Special Administrative Region. The courts shall exercise judicial power independently and free from any interference. Members of the judiciary shall be immune from legal action in respect of their judicial functions. The courts shall decide cases in accordance with the laws of the Hong Kong Special Administrative Region and may refer to precedents in other common law jurisdictions.

Judges of the Hong Kong Special Administrative Region courts shall be appointed by the chief executive of the Hong Kong Special Administrative Region acting in accordance with the recommendation of an independent commission composed of local judges, persons from the legal profession and other eminent persons. Judges shall be chosen by reference to their judicial qualities and may be recruited from other common law jurisdictions. A judge may only be removed for inability to discharge the functions of his office, or for misbehaviour, by the chief executive of the Hong Kong Special Administrative Region acting in accordance with the recommendation of a tribunal appointed by the chief judge of the court of final appeal, consisting of not fewer than three local judges. Additionally, the appointment or removal of principal judges (i.e. those of the highest rank) shall be made by the chief executive with the endorsement of the Hong Kong Special Administrative Region legislature and reported to the Standing Committee of the National People's Congress for the record. The system of appointment and removal of judicial officers other than judges shall be maintained.

The power of final judgment of the Hong Kong Special Administrative Region shall be vested in the court of final appeal in the Hong Kong Special Administrative Region, which may as required invite judges from other common law jurisdictions to sit on the court of final appeal.

A prosecuting authority of the Hong Kong Special Administrative Region shall control criminal prosecutions free from any interference.

On the basis of the system previously operating in Hong Kong, the Hong Kong Special Administrative Region Government shall on its own make provision for local lawyers and lawyers from outside the Hong Kong Special Administrative Region to work and practise in the Hong Kong Special Administrative Region.

The Central People's Government shall assist or authorise the Hong Kong Special Administrative Region Government to make appropriate arrangements for reciprocal juridical assistance with foreign states.

### IV

After the establishment of the Hong Kong Special Administrative Region, public servants previously serving in Hong Kong in all government departments, including the police department, and members of the judiciary may all remain in employment and continue their service with pay, allowances, benefits and conditions of service no less favourable than before. The Hong Kong Special Administrative Region Government shall pay to such persons who retire or complete their contracts, as well as to those who have retired before 1 July 1997, or to their dependants, all pensions, gratuities, allowances and benefits due to them on terms no less favourable than before, and irrespective of their nationality or place of residence.

The Hong Kong Special Administrative Region Government may employ British and other foreign nationals previously serving in the public service in Hong Kong, and may recruit British and other foreign nationals holding permanent identity cards of the Hong Kong Special Administrative Region to serve as public servants at all levels, except as heads of major government departments (corresponding to branches or departments at Secretary level) including the police department, and as deputy heads of some of those departments. The Hong Kong Special Administrative Region Government may also employ British and other foreign nationals as advisers to government departments and, when there is a need, may recruit qualified candidates from outside the Hong Kong Special Administrative Region to professional and technical posts in government departments. The above shall be employed only in their individual capacities and, like other public servants, shall be responsible to the Hong Kong Special Administrative Region Government.

The appointment and promotion of public servants shall be on the basis of qualifications, experience and ability. Hong Kong's previous system of recruitment, employment, assessment, discipline, training and management for the public service (including special bodies for appointment, pay and conditions of service) shall, save for any provisions providing privileged treatment for foreign nationals, be maintained.

## V

The Hong Kong Special Administrative Region shall deal on its own with financial matters, including disposing of its financial resources and drawing up its budgets and its final accounts. The Hong Kong Special Administrative Region shall report its budgets and final accounts to the Central People's Government for the record.

The Central People's Government shall not levy taxes on the Hong Kong Special Administrative Region. The Hong Kong Special Administrative Region shall use its financial revenues exclusively for its own purposes and they shall not be handed over to the Central People's Government. The systems by which taxation and public expenditure must be approved by the legislature, and by which there is accountability to the legislature for all public expenditure, and the system for auditing public accounts shall be maintained.

## VI

The Hong Kong Special Administrative Region shall maintain the capitalist economic and trade systems previously practised in Hong Kong. The Hong Kong Special Administrative Region Government shall decide its economic and trade policies on its own. Rights concerning the ownership of property, including those relating to acquisition, use, disposal, inheritance and compensation for lawful deprivation (corresponding to the real value of the property concerned, freely convertible and paid without undue delay) shall continue to be protected by law.

The Hong Kong Special Administrative Region shall retain the status of a free port and continue a free trade policy, including the free movement of goods and capital. The Hong Kong Special Administrative Region may on its own maintain and develop economic and trade relations with all states and regions.

The Hong Kong Special Administrative Region shall be a separate customs territory. It may participate in relevant international organisations and international trade agreements (including preferential trade arrangements), such as the General Agreement on Tariffs and Trade and arrangements regarding international trade in textiles. Export quotas, tariff preferences and other similar arrangements obtained by the Hong Kong Special Administrative Region shall be enjoyed exclusively by the Hong Kong Special Administrative Region. The Hong Kong Special Administrative Region shall have authority to issue its own certificates of origin for products manufactured locally, in accordance with prevailing rules of origin.

The Hong Kong Special Administrative Region may, as necessary, establish official and semi-official economic and trade missions in foreign countries, reporting the establishment of such missions to the Central People's Government for the record.

## VII

The Hong Kong Special Administrative Region shall retain the status of an international financial centre. The monetary and financial systems previously practised in Hong Kong, including the systems of regulation and supervision of deposit taking institutions and financial markets, shall be maintained.

The Hong Kong Special Administrative Region Government may decide its monetary and financial policies on its own. It shall safeguard the free operation of financial business and the free flow of capital within, into and out of the Hong Kong Special Administrative Region. No exchange control policy shall be applied in the Hong Kong Special Administrative Region. Markets for foreign exchange, gold, securities and futures shall continue.

The Hong Kong dollar, as the local legal tender, shall continue to circulate and remain freely convertible. The authority to issue Hong Kong currency shall be vested in the Hong Kong Special Administrative Region Government. The Hong Kong Special Administrative Region Government may authorise designated banks to issue or continue to issue Hong Kong currency under statutory authority, after satisfying itself that any issue of currency will be soundly based and that the arrangements for such issue are consistent with the object of maintaining the stability of the currency. Hong Kong currency bearing references inappropriate to the status of Hong Kong as a Special Administrative Region of the People's Republic of China shall be progressively replaced and withdrawn from circulation.

The Exchange Fund shall be managed and controlled by the Hong Kong Special Administrative Region Government, primarily for regulating the exchange value of the Hong Kong dollar.



## VIII

The Hong Kong Special Administrative Region shall maintain Hong Kong's previous systems of shipping management and shipping regulation, including the system for regulating conditions of seamen. The specific functions and responsibilities of the Hong Kong Special Administrative Region Government in the field of shipping shall be defined by the Hong Kong Special Administrative Region Government on its own. Private shipping businesses and shipping-related businesses and private container terminals in Hong Kong may continue to operate freely.

The Hong Kong Special Administrative Region shall be authorised by the Central People's Government to continue to maintain a shipping register and issue related certificates under its own legislation in the name of "Hong Kong, China".

With the exception of foreign warships, access for which requires the permission of the Central People's Government, ships shall enjoy access to the ports of the Hong Kong Special Administrative Region in accordance with the laws of the Hong Kong Special Administrative Region.

## IX

The Hong Kong Special Administrative Region shall maintain the status of Hong Kong as a centre of international and regional aviation. Airlines incorporated and having their principal place of business in Hong Kong and civil aviation related businesses may continue to operate. The Hong Kong Special Administrative Region shall continue the previous system of civil aviation management in Hong Kong, and keep its own aircraft register in accordance with provisions laid down by the Central People's Government concerning nationality marks and registration marks of aircraft. The Hong Kong Special Administrative Region shall be responsible on its own for matters of routine business and technical management of civil aviation, including the management of airports, the provision of air traffic services within the flight information region of the Hong Kong Special Administrative Region, and the discharge of other responsibilities allocated under the regional air navigation procedures of the International Civil Aviation Organisation.

The Central People's Government shall, in consultation with the Hong Kong Special Administrative Region Government, make arrangements providing for air services between the Hong Kong Special Administrative Region and other parts of the People's Republic of China for airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region and other airlines of the People's Republic of China. All Air Service Agreements providing for air services between other parts of the People's Republic of China and other states and regions with stops at the Hong Kong Special Administrative Region and air services between the Hong Kong Special Administrative Region and other states and regions with stops at other parts of the People's Republic of China shall be concluded by the Central People's Government. For this purpose, the Central People's Government shall take account of the special conditions and economic interests of the Hong Kong Special Administrative Region and consult the Hong Kong Special Administrative Region Government. Representatives of the Hong Kong Special Administrative Region Government may participate as members of delegations of the Government of the People's Republic of China in air service consultations with foreign governments concerning arrangements for such services.

Acting under specific authorisations from the Central People's Government, the Hong Kong Special Administrative Region Government may:

- renew or amend Air Service Agreements and arrangements previously in force; in principle, all such Agreements and arrangements may be renewed or amended with the rights contained in such previous Agreements and arrangements being as far as possible maintained;
- negotiate and conclude new Air Service Agreements providing routes for airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region and rights for overflights and technical stops; and
- negotiate and conclude provisional arrangements where no Air Service Agreement with a foreign state or other region is in force.

All scheduled air services to, from or through the Hong Kong Special Administrative Region which do not operate to, from or through the mainland of China shall be regulated by Air Service Agreements or provisional arrangements referred to in this paragraph.



The Central People's Government shall give the Hong Kong Special Administrative Region Government the authority to:

- negotiate and conclude with other authorities all arrangements concerning the implementation of the above Air Service Agreements and provisional arrangements;
- issue licences to airlines incorporated and having their principal place of business in the Hong Kong Special Administrative Region;
- designate such airlines under the above Air Service Agreements and provisional arrangements; and
- issue permits to foreign airlines for services other than those to, from or through the mainland of China.

## X

The Hong Kong Special Administrative Region shall maintain the educational system previously practised in Hong Kong. The Hong Kong Special Administrative Region Government shall on its own decide policies in the fields of culture, education, science and technology, including policies regarding the educational system and its administration, the language of instruction, the allocation of funds, the examination system, the system of academic awards and the recognition of educational and technological qualifications. Institutions of all kinds, including those run by religious and community organisations, may retain their autonomy. They may continue to recruit staff and use teaching materials from outside the Hong Kong Special Administrative Region. Students shall enjoy freedom of choice of education and freedom to pursue their education outside the Hong Kong Special Administrative Region.

## XI

Subject to the principle that foreign affairs are the responsibility of the Central People's Government, representatives of the Hong Kong Special Administrative Region Government may participate, as members of delegations of the Government of the People's Republic of China, in negotiations at the diplomatic level directly affecting the Hong Kong Special Administrative Region conducted by the Central People's Government. The Hong Kong Special Administrative Region may on its own, using the name "Hong Kong, China", maintain and develop relations and conclude and implement agreements with states, regions and relevant international organisations in the appropriate fields, including the economic, trade, financial and monetary, shipping, communications, touristic, cultural and sporting fields. Representatives of the Hong Kong Special Administrative Region Government may participate, as members of delegations of the Government of the People's Republic of China, in international organisations or conferences in appropriate fields limited to states and affecting the Hong Kong Special Administrative Region, or may attend in such other capacity as may be permitted by the Central People's Government and the organisation or conference concerned, and may express their views in the name of "Hong Kong, China". The Hong Kong Special Administrative Region may, using the name "Hong Kong, China", participate in international organisations and conferences not limited to states.

The application to the Hong Kong Special Administrative Region of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government, in accordance with the circumstances and needs of the Hong Kong Special Administrative Region, and after seeking the views of the Hong Kong Special Administrative Region Government. International agreements to which the People's Republic of China is not a party but which are implemented in Hong Kong may remain implemented in the Hong Kong Special Administrative Region. The Central People's Government shall, as necessary, authorise or assist the Hong Kong Special Administrative Region Government to make appropriate arrangements for the application to the Hong Kong Special Administrative Region of other relevant international agreements. The Central People's Government shall take the necessary steps to ensure that the Hong Kong Special Administrative Region shall continue to retain its status in an appropriate capacity in those international organisations of which the People's Republic of China is a member and in which Hong Kong participates in one capacity or another. The Central People's Government shall, where necessary, facilitate the continued participation of the Hong Kong Special Administrative Region in an appropriate capacity in those international organisations in which Hong Kong is a participant in one capacity or another, but of which the People's Republic of China is not a member.

Foreign consular and other official or semi-official missions may be established in the Hong Kong Special Administrative Region with the approval of the Central People's Government. Consular and other official mis-

sions established in Hong Kong by states which have established formal diplomatic relations with the People's Republic of China, may be maintained. According to the circumstances of each case, consular and other official missions of states having no formal diplomatic relations with the People's Republic of China may either be maintained or changed to semi-official missions. States not recognised by the People's Republic of China can only establish non-governmental institutions.

The United Kingdom may establish a Consulate-General in the Hong Kong Special Administrative Region.

## XII

The maintenance of public order in the Hong Kong Special Administrative Region shall be the responsibility of the Hong Kong Special Administrative Region Government. Military forces sent by the Central People's Government to be stationed in the Hong Kong Special Administrative Region for the purpose of defence shall not interfere in the internal affairs of the Hong Kong Special Administrative Region. Expenditure for these military forces shall be borne by the Central People's Government.

## XIII

The Hong Kong Special Administrative Region Government shall protect the rights and freedoms of inhabitants and other persons in the Hong Kong Special Administrative Region according to law. The Hong Kong Special Administrative Region Government shall maintain the rights and freedoms as provided for by the laws previously in force in Hong Kong, including freedom of the person, of speech, of the press, of assembly, of association, to form and join trade unions, of correspondence, of travel, of movement, of strike, of demonstration, of choice of occupation, of academic research, of belief, inviolability of the home, the freedom to marry and the right to raise a family freely.

Every person shall have the right to confidential legal advice, access to the courts, representation in the courts by lawyers of his choice, and to obtain judicial remedies. Every person shall have the right to challenge the actions of the executive in the courts.

Religious organisations and believers may maintain their relations with religious organisations and believers elsewhere, and schools, hospitals and welfare institutions run by religious organisations may be continued. The relationship between religious organisations in the Hong Kong Special Administrative Region and those in other parts of the People's Republic of China shall be based on the principles of non-subordination, non-interference and mutual respect.

The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Right as applied to Hong Kong shall remain in force.

## XIV

The following categories of persons shall have the right of abode in the Hong Kong Special Administrative Region, and, in accordance with the law of the Hong Kong Special Administrative Region, be qualified to obtain permanent identity cards issued by the Hong Kong Special Administrative Region Government, which state their right of abode:

- all Chinese nationals who were born or who have ordinarily resided in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region for a continuous period of 7 years or more, and persons of Chinese nationality born outside Hong Kong of such Chinese nationals;
- all other persons who have ordinarily resided in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region for a continuous period of 7 years or more and who have taken Hong Kong as their place of permanent residence before or after the establishment of the Hong Kong Special Administrative Region, and persons under 21 years of age who were born of such persons in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;
- any other persons who had the right of abode only in Hong Kong before the establishment of the Hong Kong Special Administrative Region.

The Central People's Government shall authorise the Hong Kong Special Administrative Region Government to issue, in accordance with the law, passports of the Hong Kong Special Administrative Region



of the People's Republic of China to all Chinese nationals who hold permanent identity cards of the Hong Kong Special Administrative Region, and travel documents of the Hong Kong Special Administrative Region of the People's Republic of China to all other persons lawfully residing in the Hong Kong Special Administrative Region. The above passports and documents shall be valid for all states and regions and shall record the holder's right to return to the Hong Kong Special Administrative Region.

For the purpose of travelling to and from the Hong Kong Special Administrative Region, residents of the Hong Kong Special Administrative Region may use travel documents issued by the Hong Kong Special Administrative Region Government, or by other competent authorities of the People's Republic of China, or of other states. Holders of permanent identity cards of the Hong Kong Special Administrative Region may have this fact stated in their travel documents as evidence that the holders have the right of abode in the Hong Kong Special Administrative Region.

Entry into the Hong Kong Special Administrative Region of persons from other parts of China shall continue to be regulated in accordance with the present practice.

The Hong Kong Special Administrative Region Government may apply immigration controls on entry, stay in and departure from the Hong Kong Special Administrative Region by persons from foreign states and regions.

Unless restrained by law, holders of valid travel documents shall be free to leave the Hong Kong Special Administrative Region without special authorisation.

The Central People's Government shall assist or authorise the Hong Kong Special Administrative Region Government to conclude visa abolition agreements with states or regions.

## ANNEX II

### SINO-BRITISH JOINT LIAISON GROUP

1. In furtherance of their common aim and in order to ensure a smooth transfer of government in 1997, the Government of the United Kingdom and the Government of the People's Republic of China have agreed to continue their discussions in a friendly spirit and to develop the co-operative relationship which already exists between the two Governments over Hong Kong with a view to the effective implementation of the Joint Declaration.

2. In order to meet the requirements for liaison, consultation and the exchange of information, the two Governments have agreed to set up a Joint Liaison Group.

3. The functions of the Joint Liaison Group shall be:

- (a) to conduct consultations on the implementation of the Joint Declaration;
- (b) to discuss matters relating to the smooth transfer of government in 1997;
- (c) to exchange information and conduct consultations on such subjects as may be agreed by the two sides.

Matters on which there is disagreement in the Joint Liaison Group shall be referred to the two Governments for solution through consultations.

4. Matters for consideration during the first half of the period between the establishment of the Joint Liaison Group and 1 July 1997 shall include:

- (a) action to be taken by the two Governments to enable the Hong Kong Special Administrative Region to maintain its economic relations as a separate customs territory, and in particular to ensure the maintenance of Hong Kong's participation in the General Agreement on Tariffs and Trade, the Multifibre Arrangement and other international arrangements; and
- (b) action to be taken by the two Governments to ensure the continued application of international rights and obligations affecting Hong Kong.

5. The two Governments have agreed that in the second half of the period between the establishment of the Joint Liaison Group and 1 July 1997 there will be need for closer co-operation, which will therefore be intensified during that period. Matters for consideration during this second period shall include:

- (a) procedures to be adopted for the smooth transition in 1997;



- (b) action to assist the Hong Kong Special Administrative Region to maintain and develop economic and cultural relations and conclude agreements on these matters with states, regions and relevant international organisations.
6. The Joint Liaison Group shall be an organ for liaison and not an organ of power. It shall play no part in the administration of Hong Kong or the Hong Kong Special Administrative Region. Nor shall it have any supervisory rôle over that administration. The members and supporting staff of the Joint Liaison Group shall only conduct activities with the scope of the functions of the Joint Liaison Group.
7. Each side shall designate a senior representative, who shall be of Ambassadorial rank, and four other members of the group. Each side may send up to 20 supporting staff.
8. The Joint Liaison Group shall be established on the entry into force of the Joint Declaration. From 1 July 1988 the Joint Liaison Group shall have its principal base in Hong Kong. The Joint Liaison Group shall continue its work until 1 January 2000.
9. The Joint Liaison Group shall meet in Beijing, London and Hong Kong. It shall meet at least once in each of the three locations in each year. The venue for each meeting shall be agreed between the two sides.
10. Members of the Joint Liaison Group shall enjoy diplomatic privileges and immunities as appropriate when in the three locations. Proceedings of the Joint Liaison Group shall remain confidential unless otherwise agreed between the two sides.
11. The Joint Liaison Group may by agreement between the two sides decide to set up specialist sub-groups to deal with particular subjects requiring expert assistance.
12. Meetings of the Joint Liaison Group and sub-groups may be attended by experts other than the members of the Joint Liaison Group. Each side shall determine the composition of its delegation to particular meetings of the Joint Liaison Group or sub-group in accordance with the subjects to be discussed and the venue chosen.
13. The working procedures of the Joint Liaison Group shall be discussed and decided upon by the two sides within the guidelines laid down in this Annex.

### ANNEX III

#### LAND LEASES

The Government of the United Kingdom and the Government of the People's Republic of China have agreed that, with effect from the entry into force of the Joint Declaration, land leases in Hong Kong and other related matters shall be dealt with in accordance with the following provisions:

1. All leases of land granted or decided upon before the entry into force of the Joint Declaration and those granted thereafter in accordance with paragraph 2 or 3 of this Annex, and which extend beyond 30 June 1997, and all rights in relation to such leases shall continue to be recognised and protected under the law of the Hong Kong Special Administrative Region.
2. All leases of land granted by the British Hong Kong Government not containing a right of renewal that expire before 30 June 1997, except short term tenancies and leases for special purposes, may be extended if the lessee so wishes for a period expiring not later than 30 June 2047 without payment of an additional premium. An annual rent shall be charged from the date of extension equivalent to 3 per cent of the rateable value of the property at that date, adjusted in step with any changes in the rateable value thereafter. In the case of old schedule lots, village lots, small houses and similar rural holdings, where the property was on 30 June 1984 held by, or, in the case of small houses granted after that date, the property is granted to, a person descended through the male line from a person who was in 1898 a resident of an established village in Hong Kong, the rent shall remain unchanged so long as the property is held by that person or by one of his lawful successors in the male line. Where leases of land not having a right of renewal expire after 30 June 1997, they shall be dealt with in accordance with the relevant land laws and policies of the Hong Kong Special Administrative Region.
3. From the entry into force of the Joint Declaration until 30 June 1997, new leases of land may be granted by the British Hong Kong Government for terms expiring not later than 30 June 2047. Such leases shall be granted at a premium and nominal rental until 30 June 1997, after which date they shall not require payment of an additional premium but an annual rent equivalent to 3 per cent of the rateable value of the property at that date.

adjusted in step with changes in the rateable value thereafter, shall be charged.

4. The total amount of new land to be granted under paragraph 3 of this Annex shall be limited to 50 hectares a year (excluding land to be granted to the Hong Kong Housing Authority for public rental housing) from the entry into force of the Joint Declaration until 30 June 1997.

5. Modifications of the conditions specified in leases granted by the British Hong Kong Government may continue to be granted before 1 July 1997 at a premium equivalent to the difference between the value of the land under the previous conditions and its value under the modified conditions.

6. From the entry into force of the Joint Declaration until 30 June 1997, premium income obtained by the British Hong Kong Government from land transactions shall, after deduction of the average cost of land production, be shared equally between the British Hong Kong Government and the future Hong Kong Special Administrative Region Government. All the income obtained by the British Hong Kong Government, including the amount of the above mentioned deduction, shall be put into the Capital Works Reserve Fund for the financing of land development and public works in Hong Kong. The Hong Kong Special Administrative Region Government's share of the premium income shall be deposited in banks incorporated in Hong Kong and shall not be drawn on except for the financing of land development and public works in Hong Kong in accordance with the provisions of paragraph 7(d) of this Annex.

7. A Land Commission shall be established in Hong Kong immediately upon the entry into force of the Joint Declaration. The Land Commission shall be composed of an equal number of officials designated respectively by the Government of the United Kingdom and the Government of the People's Republic of China together with necessary supporting staff. The officials of the two sides shall be responsible to their respective governments. The Land Commission shall be dissolved on 30 June 1997.

The terms of reference of the Land Commission shall be:

- (a) to conduct consultations on the implementation of this Annex;
- (b) to monitor observance of the limit specified in paragraph 4 of this Annex, the amount of land granted to the Hong Kong Housing Authority for public rental housing, and the division and use of premium income referred to in paragraph 6 of this Annex;
- (c) to consider and decide on proposals from the British Hong Kong Government for increasing the limit referred to in paragraph 4 of this Annex;
- (d) to examine proposals for drawing on the Hong Kong Special Administrative Region Government's share of premium income referred to in paragraph 6 of this Annex and to make recommendations to the Chinese side for decision.

Matters on which there is disagreement in the Land Commission shall be referred to the Government of the United Kingdom and the Government of the People's Republic of China for decision.

8. Specific details regarding the establishment of the Land Commission shall be finalised separately by the two sides through consultations.

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MEMORANDA  
(Exchanged Between the Two Sides)

UNITED KINGDOM MEMORANDUM

In connection with the Joint Declaration of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of China on the question of Hong Kong to be signed this day, the Government of the United Kingdom declares that, subject to the completion of the necessary amendments to the relevant United Kingdom legislation:

- (a) All persons who on 30 June 1997 are, by virtue of a connection with Hong Kong, British Dependent Territories Citizens (BDTCs) under the law in force in the United Kingdom will cease to be BDTCs with effect from 1 July 1997, but will be eligible to retain an appropriate status which, without conferring the right of abode in the United Kingdom, will entitle them to continue to use passports issued by the Government of the United Kingdom. This status will be acquired by such persons only if they hold or are included in such a British passport issued before 1 July 1997, except that eligible persons born on or after 1 January 1997 but before July 1997 may obtain or be included in such a passport up to 31 December 1997.
- (b) No person will acquire BDTC status on or after 1 July 1997 by virtue of a connection with Hong Kong. No person born on or after 1 July 1997 will acquire the status referred to as being appropriate in sub-paragraph (a).
- (c) United Kingdom consular officials in the Hong Kong Special Administrative Region and elsewhere may renew and replace passports of persons mentioned in sub-paragraph (a) and may also issue them to persons, born before 1 July 1997 of such persons, who had previously been included in the passport of their parent.
- (d) Those who have obtained or been included in passports issued by the Government of the United Kingdom under sub-paragraphs (a) and (c) will be entitled to receive, upon request, British consular services and protection when in third countries.

*Beijing, 19 December 1984.*

CHINESE MEMORANDUM

The Government of the People's Republic of China has received the memorandum from the Government of the United Kingdom of Great Britain and Northern Ireland dated 19 December 1984.

Under the Nationality Law of the People's Republic of China, all Hong Kong Chinese compatriots, whether they are holders of the "British Dependent Territories Citizens' Passport" or not, are Chinese nationals.

Taking account of the historical background of Hong Kong and its realities, the competent authorities of the Government of the People's Republic of China will, with effect from 1 July 1997, permit Chinese nationals in Hong Kong who were previously called "British Dependent Territories Citizens" to use travel documents issued by the Government of the United Kingdom for the purpose of travelling to other states and regions.

The above Chinese nationals will not be entitled to British consular protection in the Hong Kong Special Administrative Region and other parts of the People's Republic of China on account of their holding the above-mentioned British travel documents.

*Beijing, 19 December 1984.*

加港文獻館

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# BRITAIN'S RECORD IN HONG KONG

With only 6 million people and a land area of little over 400 square miles, Hong Kong is one of the economic wonders of the world, a monument to successful free market capitalism. If the facts of geography and history had been different the territory would now be a flourishing independent state. Yet with the transfer of sovereignty and control to China at midnight on 30 June 1997, Hong Kong becomes a Special Administrative Region of the PRC with a 'high degree of autonomy'; the theory of 'one country, two systems' will be put into practice for the first time.

After detailing with the negotiations which led to the Joint Declaration, this study explains how Hong Kong representatives were given a voice in determining policy, and considers whether there were alternative approaches which might have yielded better results. It also sets out the background to the long and acrimonious dispute over elections, showing that differences between Britain and China in this sensitive area did not begin with Mr Patten.

'Sir Robin McLaren brings to his history of the British record in Hong Kong an unrivalled personal experience of British administration, stretching back over more than thirty years. He paints a vivid picture of the extremely limited room for diplomatic manoeuvre available to the British government throughout these years. This admirably concise and readable account is recommended to specialist and generalist alike.' – *The Lord Gillmore of Thamesfield*

'Sir Robin McLaren has skilfully tapped his own deep well of experience to produce a meticulously balanced and crisply readable account of a hugely unpredictable success story of Sino-British partnership.' – *The Lord Howe of Aberavon*



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